

Enhancing Legal Protection

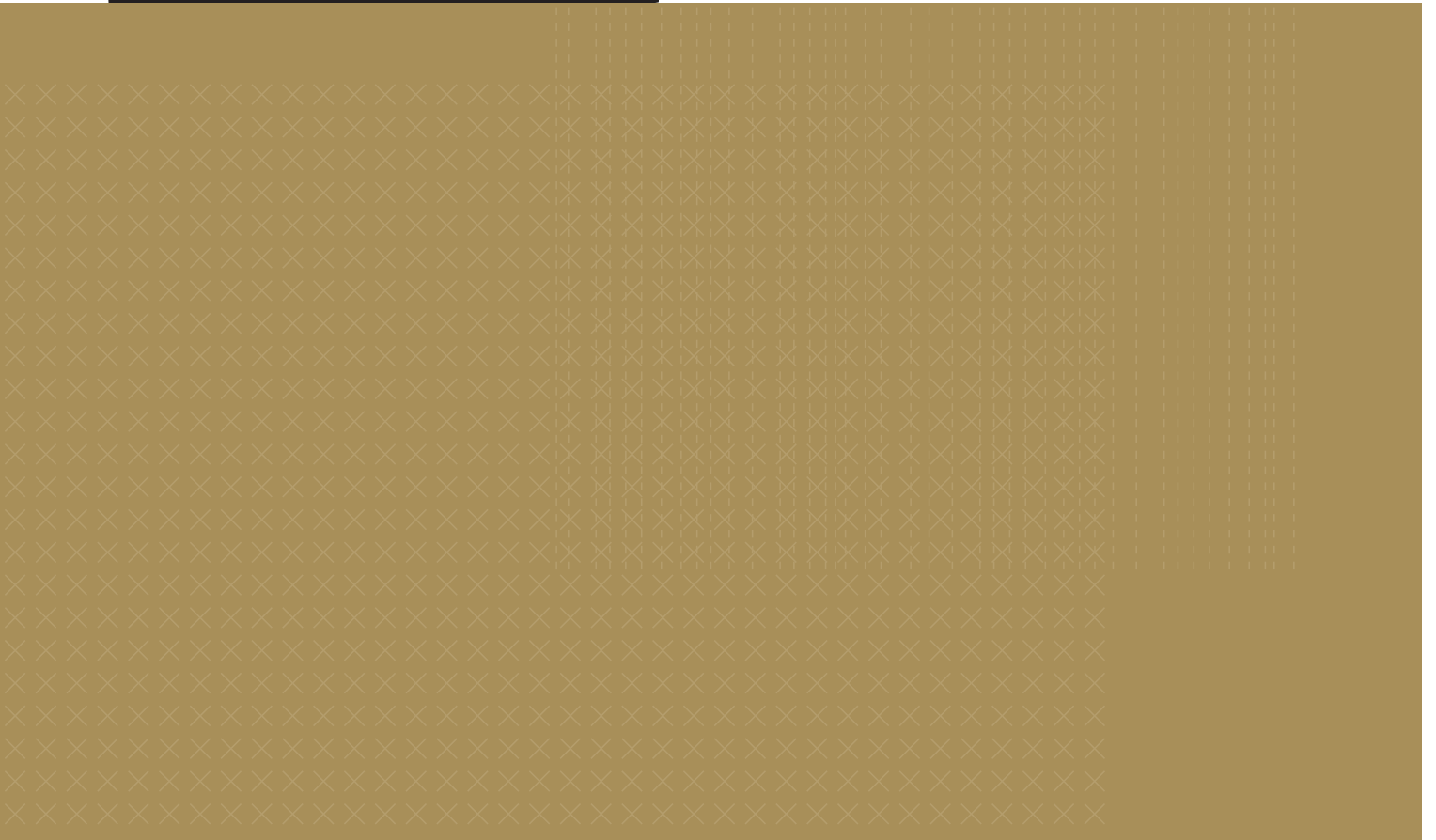
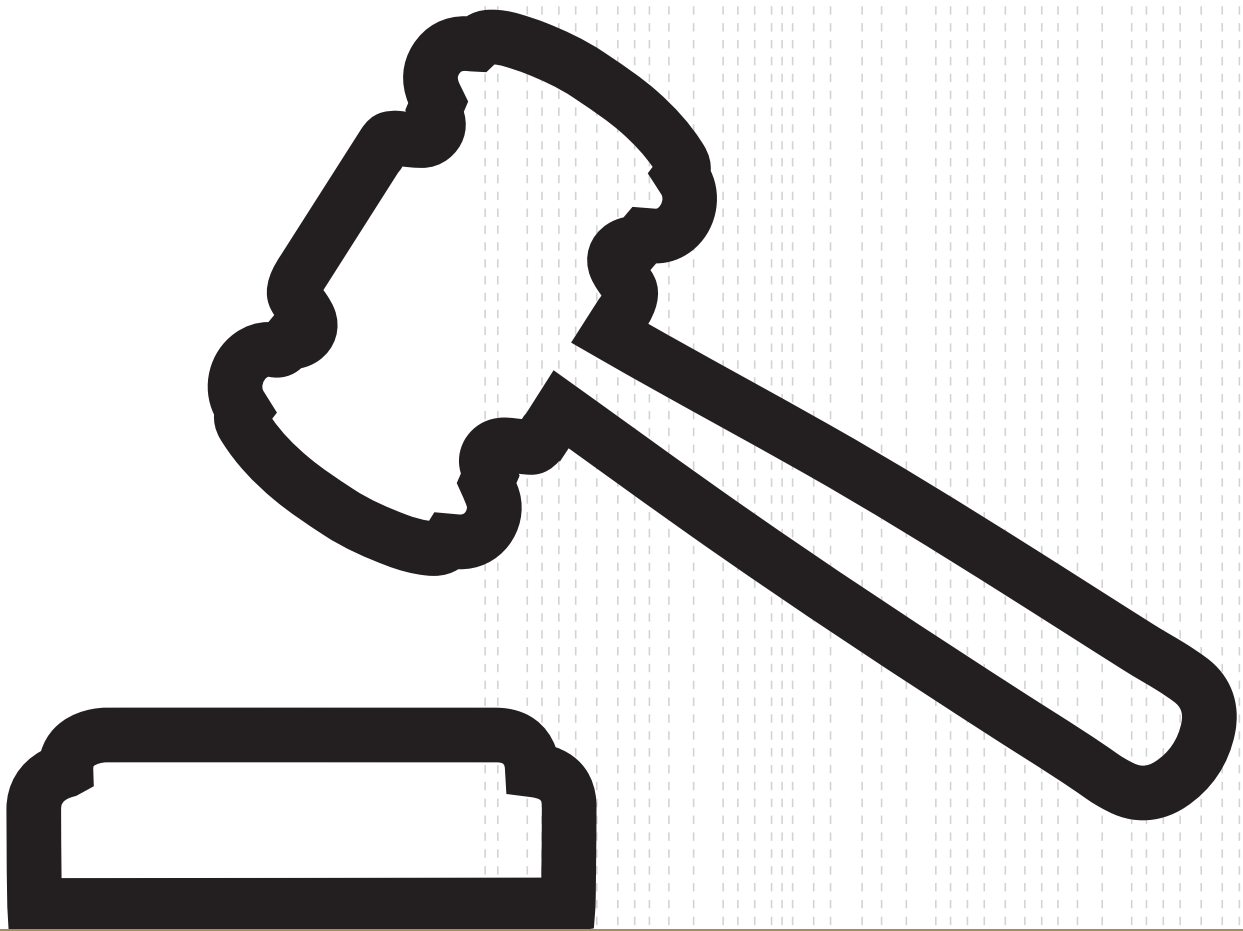
加強法律保障

公平公正

法律部就公署各方面工作提供法律意見，並會檢討任何可能影響個人資料私隱的現行及擬議法例和政府政策，並密切留意海外與公署工作相關的資料保障法律發展情況。法律部亦執行法律協助計劃，及代表私隱專員出席法庭或行政上訴委員會的聆訊。

Equity and Fairness

The Legal Division provides legal advice on all aspects of the work of the PCPD, and reviews existing and proposed legislation and government policies that may affect the privacy of individuals with respect to personal data. We also monitor developments in overseas data protection laws that are relevant to the PCPD's work. The Division also administers the Legal Assistance scheme, and represents the Commissioner in any hearings before the courts or the Administrative Appeals Board.



規管個人資料跨境流動

條例第33條對資料轉移至香港以外的地方作出嚴謹和全面的規管。除非在條例指明如下的情況，明確禁止把個人資料轉移到香港以外的地方：

- (a) 私隱專員指明該地方有與條例大體上相似、或達致與條例的目的相同的目的之法律正在生效；及
- (b) 資料使用者已採取所有合理的預防措施及作出所有應作出的努力，以確保在該地方處理有關資料的方式不會違反條例的規定（「克盡職責的規定」）。

然而，第33條自條例於1995年實施至今尚未生效。因此，目前對轉移至海外地區的個人資料保障是相對薄弱及十分不全面。

今時今日，全球數據流動的情況已跟條例於九十年代制定時大為不同。隨著科技進步，加上機構的業務模式和行事方式改變，個人資料的轉移已變成數據化。跨境數據流動持續不斷，而且規模越來越大。機構包括中小企不停地提升效率、方便用戶及引進新產品，當中對全球數據流動有一定的影響。有些機構透過雲端運算技術把數據分散存放在不同的司法管轄區，有些則把處理資料的工序外判給世界各地的承辦商。國際間在人力資源、金融財務、電子商貿、公共安全和醫療研究方面的電子資料轉移，已是當今全球經濟不可分割的部分。世界各地都紛紛採取機制，加強保障跨境數據流動方面的個人資料私隱。

為協助政府重新正視實施條例第33條，以確保香港維持國際金融中心和數據樞紐的地位，私隱專員於2013年聘請顧問對50個司法區的私隱法例進行調查，制定了一份白名單，羅列與條例大體上相似、或達致與條例的目的相同的目的之資料保障法律正在生效的地區。公署已把報告提交政府，但報告內容須保密。

2014年12月私隱專員發出了《保障個人資料：跨境資料轉移指引》，協助機構為第33條的實施作好準備，加強跨境資料轉移的私隱保障，也讓機構更清楚他們在第33條下須承擔的法律責任。

REGULATING CROSS-BORDER FLOWS OF PERSONAL DATA

Section 33 of the Ordinance provides stringent and comprehensive regulation of the transfer of personal data outside Hong Kong. It expressly prohibits the transfer of personal data to places outside Hong Kong except in circumstances such as the following:

- (a) if the destination is specified by the Commissioner as one which has in force a data-protection law which is substantially similar to, or serves the same purpose as, the Ordinance; and
- (b) if the data user has taken all reasonable precautions and exercised all due diligence to ensure that the data will not, in the destination, be handled in a manner tantamount to a contravention of the requirements under the Ordinance (the “Due Diligence Requirement”).

However, section 33 of the Ordinance has not been brought into force since its enactment in 1995. Hence, the current protection for personal data transferred to overseas jurisdictions is relatively weak and far from comprehensive.

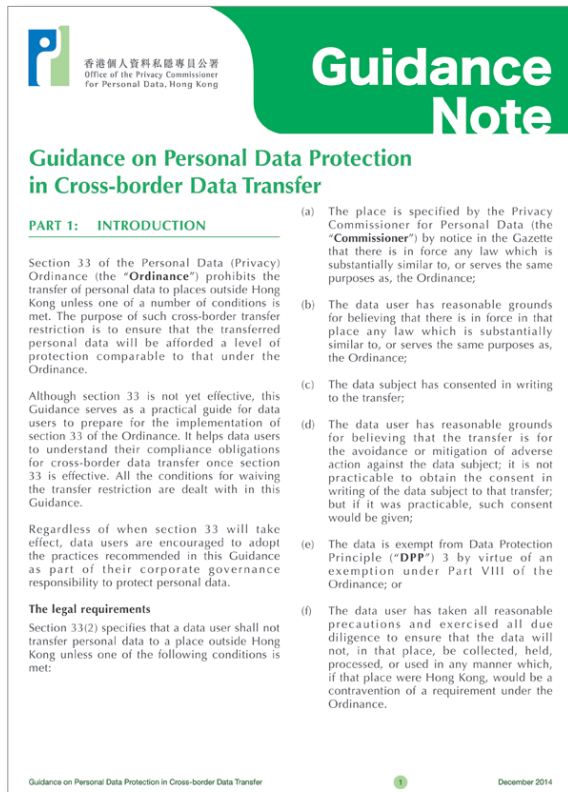
The situation of global data flows is markedly different today than in the 1990s when the Ordinance was enacted. Advances in technology, along with changes in organisations’ business models and practices, have turned personal data transfers into personal data flows. Data is moving across borders continuously and on a far greater scale. Organisations, including small and medium enterprises, are enhancing their efficiency, improving user convenience and introducing new products by practices which have implications for global data flows. They vary from storing data in different jurisdictions via the ‘cloud’ to outsourcing activities to sub-contractors around the world. Electronic international data transfers in areas such as human resources, financial services, education, e-commerce, public safety, and health research are now an integral part of the global economy. Countries worldwide are adopting a range of mechanisms to protect the personal data privacy of individuals in the context of cross-border data flows.

To assist the Government to have a renewed focus on section 33 of the Ordinance so as to preserve Hong Kong’ status as an international financial centre and data hub, the Commissioner engaged a consultant to complete a survey of the privacy laws of 50 jurisdictions in 2013; and come up with a white list of places which have in force a data protection law which is substantially similar to, or serves the same purpose as, the Ordinance. A copy of the report, which remains confidential, has been forwarded to the Government.

In December 2014, the Commissioner published a guidance note entitled *Guidance on Personal Data Protection in Cross-border Data Transfer* (the “Guidance”) to help organisations prepare for the eventual implementation of section 33 of the Ordinance and enhance privacy protection for cross-border data transfers. The Guidance helps organisations understand their compliance obligations under section 33.

該指引詳細解釋條例第33(2)(a)至(2)(f)條豁免跨境資料轉移限制的所有情況。關於機構要符合克盡職責的規定，該指引提供了一份建議範本條文，協助機構制定與海外資料接收者的跨境資料轉移協議。機構可按其商業需要作出修改或增添。

The Guidance contains detailed explanations of all the specified conditions contained in sections 33(2)(a) to (2)(f) of the Ordinance for waiving cross-border data transfer restrictions. As regards the steps organisations need to take to satisfy the Due Diligence Requirement, the Guidance provides a set of recommended model data transfer clauses to assist organisations in developing cross-border data transfer agreements with their overseas data recipients. Organisations can adapt or add to the clauses according to their specific commercial needs.



保障個人資料：跨境資料轉移指引
Guidance on Personal Data Protection
in Cross-border Data Transfer

私隱專員鼓勵機構在條例第33條生效前，自願採取指引中的建議，以履行其企業管治的責任。公署會舉辦講座介紹該指引、依從第33條的責任，及指引建議的良好行事方式。

The Commissioner encourages organisations to adopt, voluntarily, the practices recommended in the Guidance as part of their corporate governance responsibility before section 33 of the Ordinance comes into operation. Seminars on the Guidance will be conducted to promote understanding of the target audience on the compliance obligations under section 33 and the practices recommended in the Guidance.

電子健康紀錄互通系統

電子健康紀錄指以電子方式儲存的紀錄，內載與個人健康有關的資料。電子健康紀錄互通系統（「互通系統」）為公私營醫護提供者（包括醫生及其他醫護專業人員）提供資訊基建平台，讓他們在取得病人的同意後，上載並取閱病人的電子健康紀錄，作醫護相關用途。

電子健康紀錄內的病人健康紀錄屬個人資料，因此由條例規管。毫無疑問，互通系統的好處是可以令到以病人為本的醫護協作模式更有效率；但同時亦對保障私隱及個人資料方面構成重大挑戰。為確保病人的個人資料在互通系統下獲得適當保障，公署自2007年起參與政府就互通系統而成立的法律、私隱及保安問題工作小組。

2014年4月14日，食物及衛生局就設立互通系統、分享及使用互通系統中的資料及資訊、保障互通系統，以及其他附帶及相關事宜，向立法會提交《電子健康紀錄互通系統條例草案》（「草案」）。

該草案建立健全的法律框架，為個人資料私隱提供的保障，不能低過現行條例所提供的保障，並與病歷的敏感程度相符，這是非常重要的。公署在審視該草案後，認為某些範疇需要進一步考慮及修訂。

公署提出了下述主要關注：

- (a) 醫護專業人員應只按「有需要知道」的情況，才查閱病人相關的健康資料；
- (b) 有需要提供一個「保險箱」，以儲存病人的某些特別敏感的病歷資料（如精神科疾病、精神狀況或遺傳疾病），及加強控制查閱該些資料；
- (c) 即使是「獲書面授權的人士」，也不能代表資料當事人對其儲存於互通系統的健康資料行使查閱及改正權利，這安排並不合理；
- (d) 電子健康紀錄專員可允許「直接或間接提供醫護服務」的團體和「涉及提供醫護服務」的政策局或部門在互通系統登記，該酌情權過於寬鬆；

ELECTRONIC HEALTH RECORD SHARING SYSTEM

An electronic health record (“eHR”) refers to a record in electronic format containing an individual’s health-related data. An eHR Sharing System (“System”) provides an information infrastructure for public and private healthcare providers, including doctors and other healthcare professionals, to upload and access a patient’s eHRs for healthcare-related purposes, subject to the patient’s consent.

A patient’s eHR is personal data and thus falls within the regulation of the Ordinance. There is little doubt that the System will provide collaborative, patient-centred care more efficiently, but it also poses serious challenges to privacy and data protection. To ensure that patients’ personal data will be duly protected under the System, the PCPD has participated in the Government’s Working Group on Legal, Privacy and Security Issues of the System since 2007.

On 14 April 2014, the Food and Health Bureau submitted to the Legislative Council the Electronic Health Record Sharing System Bill (the “eHRSS Bill”), which provides for the establishment of the System, the sharing and using of data and information in the System, the protection of the System, and other incidental and connected matters.

It is of paramount importance that the eHRSS Bill should establish a robust legal framework to protect personal data privacy at a level no less than that provided under the Ordinance and commensurate with the sensitivity of the health data involved. After examining the eHRSS Bill, the PCPD opined that certain aspects of the bill require further deliberation and amendments.

Among other issues, the PCPD raised the following major concerns:

- (a) that healthcare professionals should access the health records of a patient only on a strictly “need-to-know” basis;
- (b) the need to provide a “safe deposit box” that allows the separate storage of certain particularly sensitive health data (such as psychiatric diseases, mental conditions or hereditary diseases) with enhanced access control by the patient;
- (c) the unreasonable denial of a patient’s right to authorise a representative in writing to exercise his data access and correction rights in respect of his health data kept in the System;
- (d) the unduly wide discretion of the eHR Commissioner in allowing registration under the System of bodies who “directly or indirectly provide healthcare” and government bureaux or departments that are “involved in providing healthcare”;

- (e) 電子健康紀錄專員並無法律責任檢視已登記的醫護提供者的電子醫療紀錄系統，這安排不能令人接受；及
- (f) 有需要把未獲授權下採用電腦以外其他途徑查閱電子健康紀錄的行為或不當使用（直接促銷以外）該些資料，也訂為罪行（例如民事刑罰）。

為方便立法會法案委員會審閱該草案，公署向法案委員會提交了下述文件，並出席了四次會議，解釋公署的關注。

- (i) 公署對該草案的主要關注¹；
- (ii) 公署對該草案的主要關注及進一步意見的概要²；及
- (iii) 公署就公私營醫療合作－醫療病歷互聯試驗計劃的保障病人私隱措施提交的文件³。

除(f)項外，政府接納了公署提出的其他所有關注，已就該草案作出委員會審議階段修正案。

- (e) the unacceptable arrangement to relieve the eHR Commissioner from the legal obligation to inspect the information systems used by the healthcare providers participating in the System; and
- (f) the need to introduce offences such as civil penalties for unauthorised access to eHR records by means other than the use of computer and for unauthorised use of the data other than for direct marketing.

To help the Legislative Council Bills Committee examine the Bill and to explain the PCPD's concerns, the PCPD attended four meetings of the Bills Committee and lodged the following papers:

- (i) The PCPD's major concerns regarding the eHRSS Bill¹;
- (ii) A summary of the PCPD's major concerns and further comments on the eHRSS Bill²; and
- (iii) A paper on the safeguards for the protection of patient privacy under the Public Private Interface-Electronic Patient Record Sharing Pilot Project³.

The Government was convinced of all the concerns raised by the PCPD except item (f). Draft Committee Stage amendments to the HRSS Bill were made accordingly.

1 詳情請參閱：
www.pcpd.org.hk/tc_chi/news_events/speech/files/eHR_legco_paper_c.pdf

2 詳情請參閱：
www.pcpd.org.hk/tc_chi/news_events/speech/files/eHR_summary_legco_paper_c.pdf

3 立法會CB(2)2078/13-14(01)號文件：
www.legco.gov.hk/yr13-14/chinese/bc/bc56/papers/bc56cb2-2078-1-c.pdf

1 Details of the paper are available at:
www.pcpd.org.hk/english/news_events/speech/files/eHR_legco_paper_e.pdf

2 Details of the paper are available at:
www.pcpd.org.hk/english/news_events/speech/files/eHR_summary_legco_paper_e.pdf

3 LC Paper No. CB(2)2078/13-14(01) available at:
www.legco.gov.hk/yr13-14/english/bc/bc56/papers/bc56cb2-2078-1-e.pdf

向行政上訴委員會提出的上訴

行政上訴委員會是根據《行政上訴委員會條例》(第442章)而設立的法定組織，負責聆訊投訴人或投訴的資料使用者對私隱專員決定提出的上訴，並作出裁決。

在2014至15年度決定的 / 接獲的行政上訴案件的統計資料

本年度共有22宗上訴個案完結，及接獲26宗新提出的上訴個案。

大部分上訴個案最終被行政上訴委員會駁回，或由上訴人撤回。(圖4.1)

圖4.1：上訴的結果

- 上訴被駁回
Appeal dismissed
- 上訴被撤回
Appeal withdrawn
- 上訴得直
Appeal allowed

APPEAL LODGED WITH THE ADMINISTRATIVE APPEALS BOARD

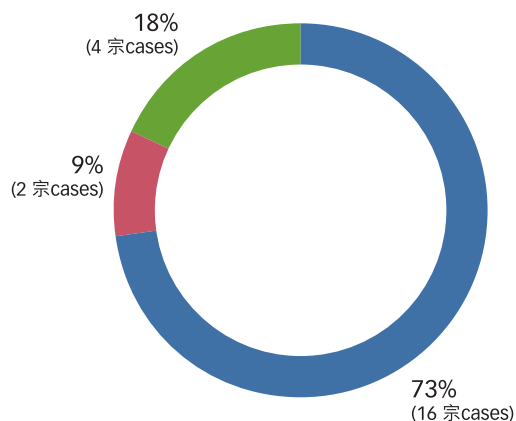
The Administrative Appeals Board ("AAB"), established under the AAB Ordinance (Cap 442), is the statutory body that hears and determines appeals against the Commissioner's decisions by a complainant or the relevant data user complained of.

Statistics of AAB cases concluded/received in the 2014 –15

During the reporting year, 22 appeal cases were concluded and 26 new appeal cases were received.

Most of the appeal cases were eventually dismissed by the AAB or withdrawn by the appellants. (Figure 4.1).

Figure 4.1: Results of appeal cases



在本年度接獲的26宗上訴個案中，24宗是關於私隱專員不作調查的決定。私隱專員作出該等決定，主要是基於沒有表面證據支持指稱的違反行為，及 / 或被投訴者已採取補救行動糾正所指稱的違反行為。

其餘兩宗上訴則是反對私隱專員在完成調查後送達執行通知的決定。(圖4.2)

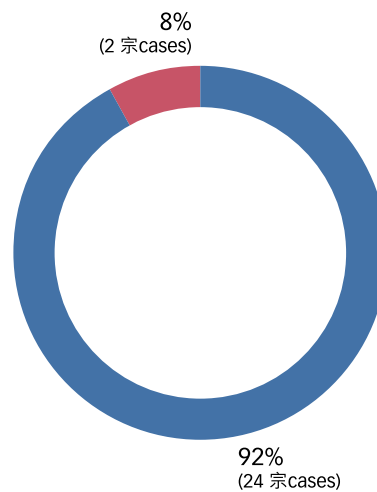
Of the 26 appeal cases received during the year, 24 were related to the Commissioner’s decision not to carry out an investigation as there was no *prima facie* evidence to support the alleged contravention and/or the party complained against had taken remedial action to rectify the alleged contraventions.

The remaining two cases were appeals against the Commissioner’s decision to serve an enforcement notice after the conclusion of an investigation. (Figure 4.2)

圖4.2：上訴所涉的性質

- 針對私隱專員決定不進行調查的上訴
Appeal against the Commissioner’s decision not to carry out an investigation
- 針對私隱專員調查後決定的上訴
Appeal against the Commissioner’s decision after conclusion of investigation

Figure 4.2: Nature of the appeals



讚賞 Compliment

……條例沒有授予私隱專員足夠權力，以全面落實私隱原則。2012年對條例作出一些主要修訂後、(現任)私隱專員積極執行，加上行政上訴委員會一些傾向私隱保障的裁決，已開始克服這些限制，為這法例賦予『新生命』。

... the Ordinance lacked sufficient powers for the Commissioners to fully enforce its privacy principles. Major reforms to the Ordinance in 2012, an activist approach to enforcement by the (current) Commissioner, and some pro-privacy tribunal decisions, have started to overcome these limitations and give this established law a ‘new lease of life’.

Professor Graham Greenleaf
Author of Asian Data Privacy Laws (OUP) 2014

在26宗上訴個案中，18宗涉及指稱違反保障資料原則。四宗個案涉及指稱不依從查閱資料要求及／或改正資料要求，而其餘四宗則涉及同時指稱不依從查閱資料要求及保障資料原則。（圖4.3）

有關涉及不依從保障資料原則的22宗個案中，八項指稱涉及超乎適度及／或不公平收集個人資料；六項涉及個人資料的保留期間；17項涉及未經資料當事人事前同意而使用及／或披露其個人資料；四項涉及個人資料保安措施的不足及一項涉及未能提供資料使用者政策。

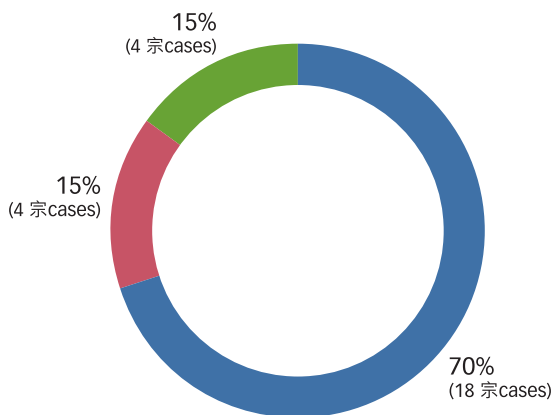
Of the 26 appeal cases, 18 involved alleged breaches of Data Protection Principles. Four cases involved alleged non-compliance with a data access request and/or data correction request, and the remaining four cases involved alleged non-compliance with both a data access request and Data Protection Principles (Figure 4.3).

Of the 22 cases involving non-compliance with the Data Protection Principles, eight allegations involved the excessive and/or unfair collection of personal data; six involved the duration of retention of personal data; 17 involved the use and/or disclosure of personal data without the data subject's prior consent; four involved the inadequacy of security safeguards of personal data, and one involved the unavailability of a data user's policy.

圖4.3：上訴所涉及的條例的規定

Figure 4.3: The provisions of the Ordinance involved in the appeals

- 違反保障資料原則
Contraventions of data protection principles
- 不遵從查閱資料要求或資料改正要求
Non-compliance of data access request or data correction request
- 不遵從查閱資料要求及保障資料原則
Non-compliance of data access request and data protection principles





上訴個案簡述 1 (行政上訴委員會上訴案件第24/2013號)

上訴人投訴快易通有限公司在他申請戶口時收集其身份證副本及身份證號碼。行政上訴委員會裁定收集有關資料是符合《身分證號碼及其他身分代號實務守則》的相關條文。

投訴內容

快易通是本港電子道路收費系統的服務提供者。該系統把人手收費過程自動化，在駕駛者的預繳戶口中扣除費用。上訴人投訴快易通的戶口申請表，規定申請人提供多項個人資料，包括身份證號碼及副本。

私隱專員的決定

快易通在回應私隱專員的查詢時辯稱，收集申請人的身份證號碼是必需的，以避免在某些情況下，發生超過輕微程度的損失或損害。根據快易通提供的數字，2012年個人每月平均總欠款是34萬1千元，而這類戶口的每月平均數目是3,459個。每月戶口欠款超過1,000元的平均戶口數目是10.33個，平均欠款1,852元，而最高欠款額為14,294元。在2009至2012年，總欠款超過5,000元的戶口數目是14個，平均欠款10,438元，而最高欠款額為28,777元。

《身分證號碼及其他身分代號實務守則》(「守則」)第2.3.3.3段規定，資料使用者在下述情況可收集個人的身份證號碼：藉以在目前或將來正確識辨身份證持證人的身份或正確認出其個人資料，而為了避免對資料使用者造成在有關情況下屬超過輕微程度的損害或損失，作出如此正確識辨或認出，是有需要的。

私隱專員以1,000元作為基準，這是根據公署調查報告R10-9866(八達通日日賞計劃)及R12-3890(易賞錢計劃)而得出的。在調查報告中，按每名顧客計，潛在損失是800至1,000元，被視為輕微。私隱專員在考慮快易通的營運模式及所提供的統計數字後，認為快易通的顧客戶口欠款

Appeal Case Note 1 (AAB Appeal No. 24 of 2013)

The Appellant filed a complaint against Autotoll for collecting a copy of his Hong Kong Identity Card and the card number when applying for an account. The AAB concluded that the collection of such data complied with the relevant provisions under the Code of Practice on Identity Card Numbers and other Personal Identifiers.

The complaint

Autotoll is the service provider of the Electronic Toll Collection System ("ETC System") in Hong Kong. It allows the manual in-lane toll collection process to be automated by deducting the toll from a motorist's pre-paid account. The Appellant complained that on the application form for an account with Autotoll, applicants are required to supply various personal data, including their Hong Kong Identity Card ("HKID Card") number and HKID Card copy.

The Commissioner's decision

In response to the Commissioner's enquiries, Autotoll argued that the collection of HKID Card numbers from the applicants was necessary to safeguard against loss or damage which was more than trivial in the circumstances. According to the figures provided by Autotoll, in 2012 the monthly average total negative balance owed by individuals was \$341,000 and the average number of such accounts was 3,459 per month. The monthly average number of accounts of individuals with a negative balance exceeding \$1,000 was 10.33 with an average negative balance of \$1,852, and the highest amount owed was \$14,294. Between 2009 and 2012, there were 14 accounts in which the total undercharged toll exceeded \$5,000. The average amount outstanding was \$10,438 and the highest amount was \$28,777.

Paragraph 2.3.3.3 of the Code of Practice on Identity Card Numbers and other Personal Identifiers (the "Code") provides that a data user should not collect the HKID Card number of an individual except to enable the present or future correct identification of, or correct attribution of personal data to, the holder of the HKID Card, where such correct identification or attribution is or will be necessary to safeguard against damage or loss on the part of the data user which is more than trivial in the circumstances.

The Commissioner used the sum of HK\$1,000 as the benchmark, based on previous Investigation Reports R10-9866 (Octopus Rewards Program) and R12-3890 (Moneyback Program), in which a potential loss of \$1,000 and \$800 per customer, respectively, was considered trivial. Having considered the operational mode of Autotoll and the statistics provided, the Commissioner found that the loss and damage from negative balances of Autotoll's customer accounts

所招致的損失及損害，屬超過輕微程度。故私隱專員總結認為，根據守則第2.3.3.3段，有關收集身份證號碼的做法屬於合理。

關於收集身份證副本，私隱專員留意到，只有不是由申請人親身提出的申請，才須提交身份證副本以供核實。守則第3.2.2.3段規定，資料使用者在下述情況，可收集個人的身份證副本：守則第二部准許資料使用者收集個人的身份證號碼，而資料使用者進一步收集身份證副本，作為收集或核對任何個人的身份證號碼的方法，而該人本可選擇親自提供其身份證，以代替資料使用者收集其身份證副本，卻選擇不如此做。由於快易通收集身份證號碼是守則准許的，私隱專員認為快易通在申請人未能親自作出申請時，進一步收集身份證副本是符合守則第3.2.2.3段的規定。

上訴人不滿私隱專員的決定，提出上訴。

上訴

行政上訴委員會認為，收集身份證號碼的目的是令電子道路收費系統正常運作，即恰當及適時地向負責的戶口持有人收取通行費。行政上訴委員會認為，快易通是一門生意，不應因為顧客可以選擇不披露其資料而被迫蒙受收入損失。

行政上訴委員會認為，硬性規定一個數字（不論是800元、1,000元或更高）作為基準，都是不恰當的，應把服務提供者的真正營運損失，與人為造成的損失（例如積分或獎賞錢）區分開來。收取少付及未付的通行費涉及快易通的業務核心。在一個戶口失效前，快易通需要就所有少付及未付的通行費，向隧道及收費道路營運者負責的。快易通向戶口持有人收取上述費用，對其業務十分重要。

行政上訴委員會認為，不單只看個別損失，還要看整體損失。基於龐大的顧客數目，每名顧客的小額欠款可以累積為非常龐大的數目。現時，快易通聘用收數公司追收欠款，並備存壞賬名單。它們需要識別欠款戶口持有人的身份。行政上訴委員會認為，如快易通不獲准收集身份證號碼，可能被迫採取其他方法來保障其業務利益。這可能包括上訴人建議的零餘欠

was more than trivial and concluded that the collection of HKID Card numbers was justified under paragraph 2.3.3.3 of the Code.

With regard to the collection of a HKID Card copy, the Commissioner noted that it was only in cases in which the application was not made in person that the applicant was required to submit a HKID Card copy for verification. In this connection, paragraph 3.2.2.3 of the Code provides that a data user should not collect an HKID Card copy except (1) where the collection of the HKID Card number of the individual by the data user is permissible under Part II of the Code, (2) the copy of the HKID Card is collected by the data user as a means to collect or check the HKID Card number of the individual, and (3) the individual has been given the alternative of physical production of the HKID Card in lieu of collection of a copy by the data user, but has chosen not to do so. Having found that the collection of HKID Card numbers by Autotoll was permissible under the Code, the Commissioner concluded that the collection of the HKID Card copy by Autotoll when the application was not made in person was consistent with paragraph 3.2.2.3 of the Code.

Dissatisfied with the Commissioner's decision, the Appellant appealed against the Commissioner's decision.

The appeal

The AAB considered that the purpose of collecting the HKID Card number was to enable the proper running of the ETC System, namely the proper and timely collection of tolls from responsible account holders. The AAB concluded that Autotoll should not be compelled to suffer a loss of business revenue because its customers could choose not to disclose their personal data.

The AAB opined that it was inappropriate to draw a line by adopting an arbitrary figure, whether it be \$800, \$1,000 or a higher figure. The line should be drawn by distinguishing genuine commercial loss essential to the very operation of a service provider from artificially created loss, such as bonus points and cash rewards. The collection of undercharges and unpaid tolls went right to the heart of Autotoll's business. Autotoll remains liable to the tunnel and toll road operators for all undercharges and unpaid tolls incurred before an account is invalidated. It is vital to the business of Autotoll that it can collect these amounts from the account holders.

The AAB accepted that one must look not only at individual losses, but also at the total loss. Given the large customer base, a small debt per customer can build up to a very substantial sum. Autotoll uses debt collectors and maintains a bad-debt list to deal with account holders in default. They require positive identification of the delinquent account holders to do so. The AAB considered that if the collection of HKID Card numbers was disallowed, Autotoll might be forced to take other measures to protect their business interests. This might include a zero credit policy suggested by the Appellant,

政策。在這政策中，純粹因大意而未能及時為戶口增值的顧客會受到影響，而快易通可能會收到大量有關客戶服務欠佳的投訴。隧道及收費道路營運者亦會受影響，因為它們要直接向登記車主（他們可能是、或可能不是應受懲罰的戶口持有人）收取款項。

此外，如失效標籤大幅增加，隧道及收費道路營運者便可能不想快易通車道維持目前的狀況——無人看守及無障礙物，可以讓車輛通過。鑑於這可能對快易通業務和隧道及收費道路營運者的利益，構成深遠影響，行政上訴委員會不會以保障資料的名義，而干涉合法的業務運作，並同意私隱專員的觀點，認為八達通公司已按守則第2.3.3.3段行事。

行政上訴委員會接著考慮守則第2.3.4.1段的適用性。該段准許資料使用者為下述目的而收集身份證號碼：加插入確立任何人士的法律權利、利益或責任（不屬於短暫性質或在有關情況下，不屬於輕微性質）的文件。行政上訴委員會認為，該申請表及其條款與細則包含重要的權利和責任，例如戶口持有人恰當安裝標籤、在指定車輛安裝正確的標籤、更換指定車輛後通知快易通、及維持預繳款額等責任。行政上訴委員會認為，這些權利和責任對電子道路收費系統的妥善運作很重要，性質不屬於短暫及輕微。因此，行政上訴委員會裁定守則第2.3.4.1段適用，並獲得遵從。

關於收集身份證副本，行政上訴委員會認為，該申請表沒有規定申請人提交身份證副本，但快易通有權收集副本，以核實申請人的資料。申請快易通戶口的人士可透過親身、郵寄、電話或網上申請。如親身作出申請，快易通會即場檢查申請人的身份證，以核實身份。只有親身申請以外的申請，才須提交申請人的身份證副本，而有關副本會在核實後銷毀。行政上訴委員會同意私隱專員的觀點，認為快易通收集身份證副本是符合守則第3.2.2.3段的規定。

行政上訴委員會的決定

行政上訴委員會裁定快易通沒有違反保障資料第1(1)原則或守則的規定。私隱專員的決定獲確認，上訴被駁回。

in which case those customers who failed to top up their ETC card in time by mere inadvertence would suffer; and Autotoll might consequently be flooded with complaints of poor customer service. The tunnel and toll road operators would suffer too, as they would need to recover the amount due directly from the registered vehicle owners (who may or may not be the culpable account holders).

Further, if there was a significant increase in the number of invalidated tags, the tunnel and toll road operators might no longer be willing to continue the Autotoll lanes as they are now, unmanned and free of barriers. In view of the far-reaching implications this might have on Autotoll's business and the interests of the tunnel and toll road operators, the AAB did not assume any right to interfere with legitimate business operations in the name of data protection and agreed with the Commissioner that paragraph 2.3.3.3 of the Code was complied with.

The AAB next considered the application of paragraph 2.3.4.1 of the Code, which allows a data user to collect HKID Card numbers for insertion in a document for establishing a legal right, interest or liability of any person which is not of a transient nature or trivial in the circumstances. The AAB considered that the application form, together with its terms and conditions, contain a host of important rights and liabilities: e.g. the duties of an account holder to properly install the tag, to apply the correct tag to the specified vehicle, to inform Autotoll if the specified vehicle is replaced, and to maintain the prepaid amount. These rights and liabilities were found by the AAB to be crucial to the proper operation of the ETC System and therefore neither transient nor trivial. Accordingly, the AAB decided that paragraph 2.3.4.1 of the Code was applicable and complied with.

With regard to the collection of HKID Card copies, the AAB found that the application form does not require an applicant to submit a HKID Card copy, but Autotoll reserves the right to collect a copy for verification of the applicant's information. A person can apply for an Autotoll account in person, by post, by telephone or online. If an application is made in person, then verification is done by checking the applicant's HKID Card on the spot. It is only where the application is not made in person that the applicant is required to submit a copy of his HKID Card, which is destroyed after verification. The AAB agreed with the view of the Commissioner that the collection of the HKID Card copy by Autotoll was consistent with paragraph 3.2.2.3 of the Code.

The AAB's decision

The AAB decided that there was no contravention of Data Protection Principle 1(1) or the Code. The Commissioner's decision was affirmed and the appeal was dismissed.



上訴個案簡述 2 (行政上訴委員會上訴案件第26/2013號)

上訴人出席一個求職面試，簽署了授權書讓該公司索取及核證她以往的受僱資料。其後，她向該公司提出兩項查閱資料要求，要求查閱兩名前僱主所提供的推薦信。行政上訴委員會考慮該公司向有關前僱主所作的保密保證，是否構成拒絕依從她查閱資料要求的有效理由。

投訴內容

上訴人到一間公司出席求職面試，簽署了授權書讓該公司索取及核證她以往的受僱資料。該公司其後從僱主X及Y取得有關上訴人的推薦信。

上訴人後來依據條例第18(1)條，向該公司提出兩項查閱資料要求，要求查閱X及Y對她作出的推薦信。該公司拒絕依從她的要求。因此，上訴人向私隱專員投訴該公司。

私隱專員的決定

該公司回覆私隱專員的查詢時，確認持有X及Y以保密條件提供的推薦信。該公司進一步援引條例第56條的豁免，但私隱專員拒絕，因為他並不認為有關推薦信是寫信人在職責以外作出的。

該公司其後尋求X及Y的同意，以便向上訴人透露推薦信的內容。X同意，但Y堅持該公司應履行承諾，把推薦信保密。

私隱專員認為，Y控制了推薦信的使用，令該公司無法依從上訴人的查閱資料要求。因此，憑藉條例第20(3)(d)條，該公司有權拒絕依從上訴人的查閱資料要求。私隱專員再得悉上訴人已直接向Y提出查閱資料要求，索取推薦信的副本，因此認為進一步調查該個案，不大可能取得更佳結果。他因而通知上訴人不繼續調查的決定。

Appeal Case Note 2 (AAB Appeal No. 26 of 2013)

The Appellant attended a job interview and signed an authorisation permitting the company to obtain and validate her previous employment data. Later, she made two data-access requests to the company seeking access to the reference letters supplied by her two former employers. The AAB considered whether the company's assurance of confidentiality to the former employers would constitute a valid ground for refusal to comply with her data access requests.

The complaint

The Appellant attended a job interview with a company and signed a written authorisation for the company to obtain and validate her previous employment data. The company subsequently obtained references regarding the Appellant from employers X and Y.

The Appellant later made two data-access requests to the company, pursuant to section 18(1) of the Ordinance, seeking access to the reference letters regarding her from X and Y. The company refused to comply with her requests. Therefore, the Appellant lodged a complaint with the Commissioner against the company.

The Commissioner's decision

In response to the Commissioner's enquiries, the company confirmed that it possessed the references, which had been provided by X and Y on the basis that they would be kept strictly confidential. The company further relied on the exemption under section 56 of the Ordinance, but this was rejected by the Commissioner as he was not convinced that the references were given by the writers other than in the ordinary course of their occupations.

The company subsequently sought to obtain consent from X and Y for the release of the reference letters to the Appellant. While X gave its consent, Y maintained that the company should honour its promise to keep the reference letter strictly confidential.

The Commissioner considered that Y had controlled the use of the reference letter in a way that prohibited the company from complying with the Appellant's data access request. Accordingly, by virtue of section 20(3)(d) of the Ordinance, the company was entitled to refuse to comply with the Appellant's data-access request. Noting further that the Appellant had lodged a data-access request with Y directly to obtain a copy of the reference letter, the Commissioner considered that further investigation of the case was unlikely to yield a better result. He informed the Appellant accordingly of his decision not to continue the investigation.

上訴

在上訴過程中，上訴人向行政上訴委員會披露Y的一封信件，Y聲稱已銷毀有關推薦信，因此不能向她提供副本。

行政上訴委員會同意私隱專員的觀點，認為第56條的豁免不適用於該公司。提供推薦信給上訴人的是Y的助理經理。因此，行政上訴委員會認為，她是在其職責的正常過程中提供的。

對於該公司援引保密承諾來拒絕依從上訴人的查閱資料要求，行政上訴委員會認為，條例並沒有訂明保密承諾是容許資料使用者拒絕依從查閱資料要求的理由。因此，一個收到資料或提供資料的資料使用者，均不能以保密承諾作為理由。

行政上訴委員會認為，Y沒有表明他場是否禁止該公司依從上訴人的查閱資料要求。如果有表明，Y會被視為根據第18(4)條持有有關資料，他便應依從該要求。如沒有表明，則第20(3)(d)條不適用於該公司。行政上訴委員會認為，Y的立場模糊及矛盾，有需要進一步調查，以確定Y是否否認第18(4)條對他適用；若是，是基於甚麼原因。

行政上訴委員會的決定

行政上訴委員會判決上訴得直，把個案發回私隱專員繼續調查。

The appeal

In the course of the appeal, the Appellant disclosed to the AAB a letter from Y claiming that it had already destroyed the reference letter and therefore it could not provide a copy of the reference letter to her.

The AAB agreed with the Commissioner's view that the exemption under section 56 was not applicable to the company. The person who gave the reference gave it in her capacity as the Assistant Manager of Y. As such, the AAB could only conclude that she had done so in the ordinary course of her occupation.

Regarding the company's reliance on confidentiality to refuse to comply with the Appellant's data access request, the AAB opined that confidentiality is not a reason stipulated in the Ordinance to permit a data user to refuse to comply with a data access request. It is not a reason afforded to a data user who received the data upon an assurance of confidentiality, nor is it a reason afforded to a data user who supplied the data on the strength of such an assurance.

The AAB took the view that Y did not state whether it prohibited the company from complying with the Appellant's data access request. If it did, then Y would be deemed to hold the data under section 18(4) and should comply with the request. If it did not, then section 20(3)(d) could not apply to extricate the company. The AAB found Y's stance to be ambiguous and contradictory and concluded that further investigation was required to ascertain, amongst others, whether Y denied that section 18(4) was applicable to it and if so, for what reason.

The AAB's decision

The AAB allowed the appeal and ordered that the case be sent back to the Commissioner for further investigation.



上訴個案簡述3 (行政上訴委員會上訴案件第19/2014號)

一宗離婚訴訟案件的答辯人投訴代表呈請人的律師行，在送達訴訟文件給他時，把文件在上訴人居所的大廈大堂展示，並在大廈管理員面前拍照，又將文件擺放在他居所門外。行政上訴委員會認為，律師行把文件擺放在上訴人居所外，以證明文件已送達到上訴人的做法，並無違反保障資料第4原則。然而，把文件在大廈大堂展示並拍照的做法，須由私隱專員進一步查究是否有違保障資料第4原則。

投訴內容

上訴人是一宗離婚訴訟個案的答辯人。上訴人向私隱專員投訴代表呈請人的律師行嚴重違反保障資料第4原則，沒有保障他的個人資料的安全。他投訴該律師行在送達訴訟文件給他時（一）把文件擺放在他的居所門外走廊公眾地方，會引致文件容易遺失因而外洩其個人資料；及（二）在他居所的大廈大堂展示每份文件封面，並在大廈管理員面前拍照，經過的住客可隨意閱讀文件首頁的內容，因而可能會外洩了他正辦離婚手續一事的私隱。

私隱專員的決定

該律師行回覆私隱專員的查詢時，解釋將訴訟文件擺放在上訴人的居所門外走廊，是依照《婚姻訴訟規則》第111(1)(b)(ii)條下進行。至於在大廈大堂拍照，該律師行稱，是要向法庭證明已把訴訟文件送達到正確的地址。

就第一項投訴，私隱專員接納該律師行的解釋，認為把訴訟文件放在信封袋內，用繩索裹好後，放在上訴人的居所門外，再通知大廈管理員，這做法雖然不能完全防止資料外洩，但為求達到確保文件不受未獲准許的、或意外的查閱這目的來說，已屬於採取了切實可行的步驟，所以沒有違反保障資料第4原則。

至於第二項投訴，私隱專員認為，在大廈大堂展示文件、並為其拍照，以證明已成功送達，做法合理，並相信展示和拍照的

Appeal Case Note 3 (AAB Appeal No. 19 of 2014)

The Respondent in divorce proceedings complained that the solicitors' firm representing the Petitioner displayed the court documents in the lobby of his residence, took photos of the court documents in front of the security guard, and placed the court documents outside his flat. The AAB concluded that the act of placing the court documents outside the Appellant's flat to prove due service had not contravened Data Protection Principle 4, but that whether displaying the court documents in the lobby and taking photos of them there had contravened Data Protection Principle 4 would require further investigation by the Commissioner.

The complaint

The Appellant, the Respondent in divorce proceedings, filed a complaint with the Commissioner against the solicitors' firm representing the Petitioner for failing to safeguard his personal data, in contravention of Data Protection Principle 4. The complaints were that when the solicitors' firm served the court documents on him, (1) the documents were placed in the corridor outside his flat and could therefore be easily lost, thus compromising the personal data contained therein; and (2) the cover pages of the bundles of documents were displayed in the lobby of his residence and photographed in front of the security guard; this arrangement might have revealed evidence of the divorce proceedings to passers-by who read the contents of the cover pages.

The Commissioner's decision

In response to the Commissioner's enquiries, the solicitors' firm explained that the court documents were placed outside the Appellant's flat according to section 111(1)(b)(ii) of the Matrimonial Causes Rules. With regard to taking photos of the documents in the lobby, the solicitors' firm stated that the purpose was to prove to the court that the court documents had been duly delivered to the correct address.

Regarding the first complaint, the Commissioner accepted the explanation of the solicitors' firm that although the act of placing the court documents (which were packed in an envelope and tied with a string) outside the Appellant's flat, coupled with notification to the security guard, might not totally prevent data leakage, practicable steps had been taken to ensure protection against unauthorised or accidental access. Therefore, there was no contravention of Data Protection Principle 4.

As for the second complaint, the Commissioner opined that displaying the covering pages of the bundles of documents in the lobby and taking photos of them to prove due service were

時間只屬短暫，即使有住客經過也不能詳細閱讀文件當中的內容。私隱專員建議上訴人為避免同類事情再次發生，應與該律師行聯絡、或留下聯絡電話號碼，以便安排日後送達訴訟文件的事宜。

基於上述理由，私隱專員決定不繼續進一步處理上訴人的投訴。上訴人不滿該決定，向行政上訴委員會提出上訴。

上訴

就第一項投訴，行政上訴委員會認為，根據《婚姻訴訟規則》，除非法庭另有指示，否則該律師行是有權選擇用哪種送達方式，毋須考慮該方式會洩漏資料的風險。既然上訴人已向處理離婚訴訟案件的聆訊法官投訴送達方式不恰當，但不獲受理；他現在不能再次以該律師行選擇不當的送達方式作出投訴。對私隱專員這一決定，行政上訴委員會並無異議。

至於第二項投訴，行政上訴委員會認為，雖然該律師行在大廈大堂展示文件冊封面並進行拍照的時間只屬短暫，但私隱專員也不能確實地認為經過的住客不會閱讀到文件封面上的資料。該律師行的唯一解釋，是他們需要證明訴訟文件已送達到正確的地址。但該律師行沒有解釋為何必須要這樣做，才可證明把訴訟文件送達給上訴人。

行政上訴委員會又認為，該律師行煞有介事地在大廈大堂展示訴訟文件及拍照，會更引起經過住客的注意，增加資料外洩的風險，做法值得商榷。行政上訴委員會進一步指出，該律師行在上訴人居所門外的照片，已能顯示出對面單位的特徵和上訴人住所鐵閘的情況，這些資料或可已辨識送達的地址。雖然這些照片是否可真正達到此作用，仍屬未知之數，但私隱專員應該考慮這些因素，才可以公平地說該律師行已採取所有切實可行的步驟。

行政上訴委員會的決定

行政上訴委員會駁回第一項投訴的上訴，但裁定第二項投訴的表面證據成立，因而發還私隱專員繼續處理。

reasonable. In reaching the decision, the Commissioner noted that the duration of time for displaying and taking the photos of the bundles of documents was minimal, and that even if there were passers-by, they could not have read the details on the cover pages. In this regard, the Commissioner recommended that the Appellant should liaise with the solicitors' firm or leave his phone number for future service of court documents to avoid a recurrence of the problem.

Based on the above grounds, the Commissioner decided not to further pursue the Appellant's complaints. The Appellant was dissatisfied with the decision and lodged an appeal with the AAB.

The appeal

Regarding the first complaint, the AAB opined that unless the court directed otherwise, the solicitors' firm had the right to choose the mode of delivery of court documents under the Matrimonial Causes Rules without considering the need to minimise data leakage. As the Appellant had already complained in vain to the judge who heard the divorce proceedings about the improper delivery of the court documents, he could not now complain to the Commissioner that the solicitors' firm had chosen an improper mode of service. Therefore, the AAB agreed with the Commissioner's decision.

Regarding the second complaint, the AAB opined that although the duration of time for displaying the covering pages of the bundles of documents in the lobby and taking photos of the bundles was minimal, the Commissioner could not conclusively rule out any possibility for passers-by to read what was on the cover pages. The sole explanation given by the solicitors' firm was the necessity to prove delivery of the court documents to the correct address. However, the solicitors' firm did not explain why it was necessary to handle it in this way.

In fact, the AAB questioned whether the solicitors' firm's obvious act of displaying and photographing the bundles of documents in the lobby might even have aroused the attention of passers-by, thus increasing the risk of data leakage. In particular, the AAB opined that the photos taken outside the Appellant's residence would have been sufficient to prove the correct address, with the features of the opposite flats and the iron gate of the Appellant's flat. Although it is still unknown whether the photos could achieve this purpose, the Commissioner should have taken these factors into account before deciding whether the solicitors' firm had taken all practicable steps to ensure compliance with Data Protection Principle 4.

The AAB's decision

The AAB dismissed the appeal in respect of the first complaint, but held that there was *prima facie* evidence to substantiate the second complaint, and thus ordered the second complaint be sent back to the Commissioner for further investigation.



上訴個案簡述4 (行政上訴委員會上訴案件第20/2014號)

上訴人在使用一家銀行的櫃員存鈔機時，發現存款金額有異，故要求銀行保留閉路電視片段或向他提供複本。行政上訴委員會裁定該項要求並不屬於條例下的「查閱資料要求」。上訴人應清楚列明是要求資料的複本，而非給銀行選擇保留或提供資料。

投訴內容

上訴人使用一家銀行的櫃員存鈔機存款入他父親的戶口。在核對數目時，上訴人發覺所顯示的存款金額有誤，於是按鍵取消交易，存鈔機卻退少了五百元。上訴人為其損失先後向該銀行的職員查問究竟及填寫投訴表格，均不得要領。之後，上訴人兩度去信銀行詢問調查進展（「該等信件」）並提出以下三項要求：(1)讓他查看閉路電視有關存款交易的錄影片段（「該片段」）；(2)銀行須保存該片段直至獲得他同意刪除為止；或(3)給他該片段的複本。

後來，銀行去信戶口持有人（即上訴人的父親）交代上訴人的投訴。上訴人不滿銀行沒有直接回覆他，卻向其父親洩露了他的個人資料。

上訴人遂向私隱專員提出三項投訴：

- (一) 該片段是他的個人資料，但該銀行無理拒絕他查看該片段；
- (二) 該銀行處理他的書面查詢時，應該按照他的指示以電郵直接回覆他，而不是在未有獲得他的同意下，以書面回覆其父親，披露了他的個人資料；
- (三) 銀行沒有在櫃員存鈔機範圍當眼處，張貼會以閉路電視收集個人資料的通知和其政策。

私隱專員的決定

關於第一項投訴，私隱專員認為，由於上訴人出現在該片段，加上該銀行已記錄了上訴人的投訴，便可以從此等資料辨別其身分，所以該片段屬上訴人的個人資料，而該銀行便涉及收集上訴人的個人資料。雖然如此，私隱專員認為，上訴人並沒有向該銀行提出條例下的「查閱資料要求」，因為上訴人在該等信件的措辭是給予該銀行作出選擇，保存該片段或向上訴

Appeal Case Note 4 (AAB Appeal No. 20 of 2014)

The Appellant found a discrepancy in the amount deposited when using an automatic teller machine (“ATM”) of a bank, so he requested the bank to retain the CCTV footage or provide a copy of the footage to him. The AAB held that the request was not a data access request under the Ordinance. The Appellant should have clearly stated that he was requesting a copy of the data, instead of allowing the bank to choose between retaining the data and providing it.

The complaint

The Appellant tried to make a deposit into his father’s bank account through an the ATM of a bank. Whilst checking the amount, the Appellant found that there was a discrepancy, so he cancelled the transaction. However, \$500 was missing after the ATM returned the deposit. The Appellant made enquiries with the bank and filled in the complaint form in respect of the loss, but the effort was in vain. Subsequently, the Appellant wrote to the bank twice to enquire about the progress of the investigation (“Letters”) and made the following three requests: (1) allow him to watch the CCTV footage (“Footage”) related to the deposit transaction; (2) retain the Footage until he consented to the deletion; or (3) give him a copy of the Footage.

Later, the bank wrote to the account holder (i.e. the Appellant’s father) and informed him of the Appellant’s complaint. The Appellant was dissatisfied that the bank did not reply to him direct and disclosed his personal data to his father.

The Appellant thus lodged three complaints with the Commissioner:

- (1) the Footage was his personal data, but the bank unreasonably rejected his request for access to the Footage;
- (2) when handling his written enquiries, the bank should have followed his instructions and given him a reply directly by email instead of giving a written reply to his father without the Appellant’s consent, thus disclosing his personal data; and
- (3) the bank had not posted any notice regarding its policy on the collection of personal data by CCTV at prominent places near the ATM.

The Commissioner’s decision

Regarding the first complaint, the Commissioner opined that as the Appellant had appeared in the Footage and the bank had recorded the Appellant’s complaint, his identity could be ascertained from the data. Hence, the Footage constituted the Appellant’s personal data and the bank was involved in its collection. However, the Commissioner was of the view that the Appellant had not made a data access request under the Ordinance because the Appellant had given the bank an option in the Letters to choose between retaining the Footage and providing a copy to him, with the bank choosing the

人提供複本，而銀行選擇了保存該片段。再者，該銀行也曾讓上訴人翻看該片段，故私隱專員認為，就此項投訴進行調查，亦不能合理地預計可帶來更滿意的結果。

至於第二項投訴，私隱專員認為，上訴人的父親是戶口的持有人，在事發當天，上訴人存款入該戶口是涉及其父親帳戶的交易及利益。因此，該銀行發信向其父親透露上訴人的投訴內容並非不合理。同時，該銀行向私隱專員表示，日後遇到同類情況時，會先直接回覆投訴人，然後才通知有關戶口持有人。

至於第三項投訴，上訴人同意不再向該銀行追究。

基於上述理由，私隱專員決定不進一步處理上訴人的投訴。上訴人不滿該決定，向行政上訴委員會提出上訴。

上訴

就投訴一而言，首先，行政上訴委員會認為，上訴人沒有以私隱專員指明的「查閱資料要求」表格作出要求，該銀行是有權拒絕提供該片段。然而，該銀行沒有以此作為理據去拒絕提供該片段的複本，而私隱專員亦不願意以這點作為答辯理由。

至於該等信件是否構成「查閱資料要求」，行政上訴委員會認為，該等信件無論是分開來看、還是一同來看，上訴人已明確地給予該銀行選擇，可保存該片段或提供複本。既然該銀行選擇了保存該片段，便沒有違反他的要求，所以上訴人的論點並不成立。若然上訴人沒有在該等信件中給予該銀行任何選擇，而單只是要求查閱其個人資料，則另作別論。基於上述理由，行政上訴委員會同意私隱專員的結論，是沒有表面證據可證明該銀行違反條例的規定，而繼續處理投訴亦不能合理地預計可帶來更滿意的結果。

至於第二項投訴，上訴人承認該銀行向他的父親匯報當天存鈔的情況，並沒有損害上訴人的私隱。行政上訴委員會認為，戶口持有人是有權得知其戶口的交易情況，包括存款人的身分。而該銀行只是透露了上訴人的姓氏，故並不構成違反條例的規定。

行政上訴委員會的決定

上訴被駁回。

former. Given the bank had also allowed the Appellant to view the Footage, the Commissioner considered that an investigation of the complaint could not reasonably be expected to bring about a more satisfactory result.

As for the second complaint, the Commissioner opined that as the Appellant's father was the account holder, and as the incident involved a transaction with his account, it was therefore in his interest, and it was reasonable for the bank to disclose the Appellant's complaint to the Appellant's father in writing. In addition, the bank assured the Commissioner that if it encounters similar cases in the future, it will reply to the complainant directly before informing the account holder.

As for the third complaint, the Appellant agreed not to pursue it any further.

Based on the above grounds, the Commissioner decided not to pursue the Appellant's complaints any further. The Appellant was dissatisfied with the decision and lodged an appeal with the AAB.

The appeal

Regarding the first complaint, the AAB opined that as the Appellant had not made a data access request with the form specified by the Commissioner, the bank had the right to refuse to provide the Footage. However, the bank had not relied on this ground for refusal and the Commissioner was unwilling to use this as a defence.

As to whether the Letters constituted a data access request, the AAB opined that regardless of whether the Letters were viewed separately or together, the Appellant expressly provided an option for the bank to choose between retaining the Footage and providing him with a copy. The bank chose to retain the Footage, which was among the options the Appellant requested. Hence, the Appellant's argument was untenable. The case would be different had the Appellant not provided any option to the bank in the Letters, and only requested access to his personal data. Based on the above grounds, the AAB agreed with the Commissioner's conclusion that there was no *prima facie* evidence that the bank had contravened the requirements under the Ordinance, and it could not reasonably be expected that further handling of the complaint would bring about a more satisfactory result for the Appellant.

Regarding the second complaint, the Appellant admitted that his privacy had not been infringed by the bank's reporting the incident to his father. The AAB was of the view that the account holder had the right to know the circumstances of the transaction involving his account, including the identity of the depositor. Since the bank had only disclosed the surname of the Appellant, there was no contravention of the Ordinance.

The AAB's decision

The appeal was dismissed.

公署就公眾諮詢所提交的意見書

SUBMISSIONS MADE IN RESPONSE TO PUBLIC CONSULTATIONS

本年度私隱專員回應以下公眾諮詢而提交意見書：

During the year, the Commissioner made submissions in response to the following public consultations:

徵詢意見的部門 Consulting Organisation	事宜 Issue
終審法院首席法官轄下的家事訴訟程序規則工作小組 The Chief Justice's Working Party on Family Procedure Rules	家事訴訟程序規則檢討的諮詢 Consultation on the Review of Family Procedure Rules
食物及衛生局 Food and Health Bureau	自願醫保計劃的諮詢 Consultation on Voluntary Health Insurance Scheme
	私營醫療機構規管的諮詢 Consultation on the Regulation of Private Healthcare Facilities

(意見書全文可於公署網站瀏覽www.pcpd.org.hk/tc_chi/enforcement/response/legco_consulting_org.html)

(The full submission can be found on the PCPD website www.pcpd.org.hk/english/enforcement/response/legco_consulting_org.html)



新入職員工 Newcomer

科技發展一日千里，我認為個人資料私隱是其中一門重要的法律領域。加入公署的法律部，我的工作包括：就個案有否違反條例提供法律意見，研究跟政策有關的議題，以及草擬相關指引以倡導符規。令我高興的是過往在私人執業時獲得的經驗和技能，現在都可應用於保障個人資料私隱的工作。公署的同事友善而且富深厚知識，與他們一起共事，我有信心可迎接更多挑戰！

I believe that personal data privacy is one of the most important areas of law in this technological era. As a member of the PCPD's legal team, my daily tasks include advising on potential contraventions of the Ordinance, doing research on policy-related topics and preparing guidance materials on compliance with the requirements under the Ordinance. I am delighted that the skills I acquired in previous private practice can be effectively applied in the various tasks I am now engaging in to safeguard personal data privacy. With the support of my friendly and knowledgeable colleagues, I look forward to the challenges ahead!

吳鎧楓
律師
Dennis NG
Legal Counsel

公署對建議中的法例及行政措施所作的評論

《2015年截取通訊及監察(修訂)條例草案》

草案旨在修訂《截取通訊及監察條例》(第589章)，為截取通訊及監察事務專員提供明確權力，檢查受保護成果，包括享有或可能享有法律專業保密權的資料，以及實施多項技術性建議，以提高該條例下規管機制的有效性。

原則上，私隱專員支持建議，以提高截取通訊及監察事務專員的監察職能。然而，他關注建議的行政安排的細節，包括揀選受保護成果作檢查、獲授予檢查權力的人員數目及職級、監督及保安措施，以及違規時的紀律處分。私隱專員認為，所有人員(包括截取通訊及監察事務專員)應清楚知悉及依從這些安排。

此外，私隱專員向政府建議，《截取通訊及監察條例》應有明確條文(而不是透過實務守則的規例)，規定執法機構在知悉撤銷訂明授權後，不得在有關撤銷與實際終止截取或秘密監察的時間差距期間，查閱或使用這些受保護成果。

最近修訂的保障資料第4(1)原則，在規定個人資料須受保障而不受「未獲准許的或意外的查閱、處理、刪除或使用所影響」外，還明確規定個人資料須不受「喪失」所影響。為與有關規定一致，私隱專員亦借此機會，促請政府對《截取通訊及監察條例》第59(1)(b)條(關於對受保護成果的保障)作出相應修訂。

草案已於2015年2月6日提交立法會，法案委員會仍在審議中。

《物業管理服務條例草案》

草案旨在成立物業管理業監管局(「監管局」)，就發牌照予經營提供物業管理服務業務的個人或業務實體，訂定條文，以規管及管制物業管理服務的提供。

私隱專員知悉，物業管理服務牌照的申請及有關續牌，須載有訂明資料及附有訂明文件。監管局可透過規例訂明載有的資料，及

COMMENTS MADE ON PROPOSED LEGISLATION AND ADMINISTRATIVE MEASURES

Interception of Communications and Surveillance (Amendments) Bill 2015

The Bill seeks to introduce amendments to the Interception of Communications and Surveillance Ordinance (Cap. 589) ("ICSO") to provide express power for the Commissioner on Interception of Communications and Surveillance ("CICS") to inspect the protected products, including information that is or may be subject to legal professional privilege, as well as to implement a number of technical proposals to enhance the effectiveness of the regulatory regime under the ICSO.

In principle, the Commissioner supported the proposal to enhance the oversight function of the CICS. However, he was concerned about the details of the proposed administrative arrangements to be implemented, which include the selection of protected products for checking, the number and rank of staff that may be delegated with the extended power of checking, supervision and security measures, and the disciplinary arrangements in case of non-compliance. The Commissioner took the view that these arrangements should be clearly made known to, and observed by, all staff, including the CICS.

Furthermore, the Commissioner recommended to the Government that there should be an explicit provision in the ICSO (instead of regulation through a code of practice) requiring law enforcement agencies not to access or use such protected products obtained during the time gap between the revocation of a prescribed authorisation and the actual discontinuance of the interception or covert surveillance by the law enforcement agencies once they have notice of such revocation.

To align the ICSO with the recent amendment to Data Protection Principle 4(1), which explicitly requires protection against "loss" of personal data apart from "unauthorised or accidental access, processing, erasure or use", the Commissioner also took the opportunity to invite the Government to make a corresponding amendment to section 59(1)(b) of the ICSO (concerning safeguards for protected products).

The Bill was introduced into the Legislative Council on 6 February 2015 and is still being scrutinised by the Bills Committee.

Property Management Services Bill

The Bill seeks to establish a Property Management Services Authority ("Authority") to provide for the licensing of individuals or entities carrying on the business of property management services, as well as regulating and controlling the provision of property management services.

The Commissioner noted that an application for a property management services licence and the renewal of such a licence must contain the prescribed information and be accompanied by the

申請續牌時附有的文件。然而，有關詳情尚未制定。私隱專員提醒政府，如訂明資料或文件包含個人資料，有關收集須符合保障資料第1(1)原則。

私隱專員亦得悉，監管局將備存成員的利益登記冊，以供公眾查閱。監管局成員須申報他們的利益。利益的類別或種類，仍有待監管局決定。建議的成員利益登記冊將包括有成員的姓名、及披露利益的詳情。同樣地，私隱專員提醒政府當局，有關資料收集亦須符合保障資料第1(1)原則。

此外，私隱專員關注監管局於憲報公佈持牌人名單（包括其姓名及牌照號碼），但沒有明確在草案表明要作此公佈的目的；私隱專員亦關注草案提出，在憲報刊登對持牌人的紀律制裁命令的公告。

私隱專員得悉，草案建議備存物業管理人登記冊。草案建議在互聯網或類似電子網絡上的物業管理人登記冊，不會包括該人就違紀行為或《物業管理服務條例》訂出的刑事罪行定罪紀錄。然而，若實地查閱該登記冊，則可查閱出定罪紀錄。私隱專員指出，個人的定罪紀錄屬敏感個人資料，除非是特別原因，否則不應隨便披露。

此外，私隱專員提醒政府，物業管理人登記冊及成員利益登記冊都屬於民政事務局長於2000年12月30日發出的「公共登記冊的檢討」便箋所訂的範疇。因此，該便箋所列的保障個人資料私隱步驟，應予依從。

政府回覆表示，知道監管局收集個人資料須依從保障資料第1原則，並會在相關的規例草擬本備妥後，徵詢私隱專員的意見。此外，政府會考慮修訂草案，以回應私隱專員的關注。修訂包括：賦權監管局向查閱持牌人定罪紀錄的人士查問原因，並明確列明公共登記冊的目的。在設立公共登記冊時，亦會確保遵從民政事務局的便箋。

草案已於2014年4月25日提交立法會，法案委員會仍在審議中。

prescribed documents. The Authority may, by regulation, prescribe the information to be contained in, and the documents to accompany an application for, a licence renewal. However, the details as such have not yet been formulated. The Commissioner reminded the Government that if the prescribed information or documents contain personal data, its collection should comply with Data Protection Principle 1(1).

The Commissioner further noted that a register of members' interest is to be maintained by the Authority for public inspection. All members of the Authority are required to disclose any interest that they have which is of a class or description to be determined by the Authority. The proposed register of members' interest will contain the members' names and the particulars of the disclosure. Similarly, the Commissioner reminded the Government that the data collection must be in compliance with Data Protection Principle 1(1).

The Commissioner raised a further concern regarding the Authority's publication of a list of licensees in the Gazette, including their names and licence numbers, without expressly spelling out the purpose of publishing them in the Bill. A similar concern was raised regarding the publication of a notice of a disciplinary order of a licensee in the Gazette under the Bill.

The Commissioner also noted that a Property Management Practitioner register is to be kept for the purposes of the Bill. It is proposed that the Property Management Practitioner register available on the internet or similar electronic network not include particulars of conviction records of any property management practitioners in relation to disciplinary offences or criminal offences under the Property Management Services Ordinance. However, this restriction does not apply to a physical inspection of the register. The Commissioner pointed out that conviction records of individuals are sensitive personal data and should be readily disclosed only for exceptional reasons.

The Commissioner also advised the Government that the register of property management practitioners and the register of members' interest are public registers within the scope of the Secretary for Home Affairs' memo dated 30 December 2000, entitled "Review of Public Registers". Therefore, the steps stipulated in the memo to protect personal data privacy should be followed.

The Government responded that it was aware that the collection of personal data by the Authority should comply with Data Protection Principle 1 and that it would seek the Commissioner's comments on the relevant draft regulation when it was available. In addition, it will consider amending the Bill to address the Commissioner's concerns. The amendments include, among others, empowering the Authority to enquire why a person needs to have access to the conviction record of a licensee and to expressly spell out the purposes of the public registers. When establishing the public registers, the Government will ensure that the Secretary for Home Affairs' memo is observed.

The Bill was introduced to the Legislative Council on 25 April 2014 and is being scrutinised by the Bills Committee.

本年度私隱專員亦就以下的立法建議和行政措施建議，提出意見：

During the year, the Commissioner also made submissions on the following proposed legislation and administrative measures:

機構 Organisation	建議的法例 / 行政措施 Proposed legislation / administrative measures
漁農自然護理署 Agriculture, Fisheries and Conservation Department	在香港實施南極海洋生物資源養護公約的立法建議 New legislation for implementing the Convention on the Conservation of Antarctic Marine Living Resources in Hong Kong
商務及經濟發展局 Commerce and Economic Development Bureau	《2014年聯合國制裁（利比里亞）規例》 United Nations Sanctions (Liberia) Regulation 2014
	《聯合國制裁（中非共和國）規例》 United Nations Sanctions (Central African Republic) Regulation
	《2014年聯合國制裁（剛果民主共和國）規例》 United Nations Sanctions (Democratic Republic of the Congo) Regulation 2014
	《2014年競爭（修訂）條例草案》 Competition (Amendment) Bill 2014
	《聯合國制裁（也門）規例》 United Nations Sanctions (Yemen) Regulation
政制及內地事務局 Constitutional and Mainland Affairs Bureau	《2014年選舉法例（雜項修訂）條例草案》 Electoral Legislation (Miscellaneous Amendments) Bill 2014
環境局 Environment Bureau	《2015年促進循環再造及妥善處置（電氣設備及電子）設備（修訂）條例草案》 Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Bill 2015
食物及衛生局 Food and Health Bureau	《2014年藥劑業及毒藥（修訂）條例草案》 Pharmacy and Poisons (Amendment) Bill 2014
	《2014年獸醫註冊（修訂）條例草案》 Veterinary Surgeons Registration (Amendment) Bill 2014
	《私營骨灰安置所條例草案》 Private Columbaria Bill
財經事務及庫務局 Financial Services and the Treasury Bureau	《2014年保險公司（修訂）條例草案》 Insurance Companies (Amendment) Bill 2014
	《2014年強制性公積金計劃（修訂）條例草案》 Mandatory Provident Fund Schemes (Amendment) Bill 2014
	優化公司破產法例的諮詢總結 Consultation Conclusions on the Legislative Proposals on the Improvement of Corporate Insolvency Law
	《交通銀行（香港）有限公司（合併）條例》的草稿 Draft provisions of the Bank of Communications (Hong Kong) Limited (Merger) Bill
海事處 Marine Department	本地載客船隻安裝船舶自動識別系統的立法建議 Legislative Proposal for the Requirement of the Installation of an Automatic Identification System on Large Local Passenger Vessels
保安局 Security Bureau	《2014年婚姻（修訂）條例草案》 Marriage (Amendment) Bill 2014

法律協助計劃

法律協助計劃於2013年4月1日開始。根據該計劃，公署可向因機構違反條例規定而蒙受損害，並有意透過法律程序以尋求補償的人，提供協助。在2014年，公署接獲七宗新的法律協助申請，其中86%（即六宗）曾在事前向公署作出投訴。

這些申請涉及下述違規指稱：(i) 過度或不公平收集個人資料；(ii) 使用或披露個人資料；及(iii) 個人資料的保安。

圖4.4：違規指控的性質

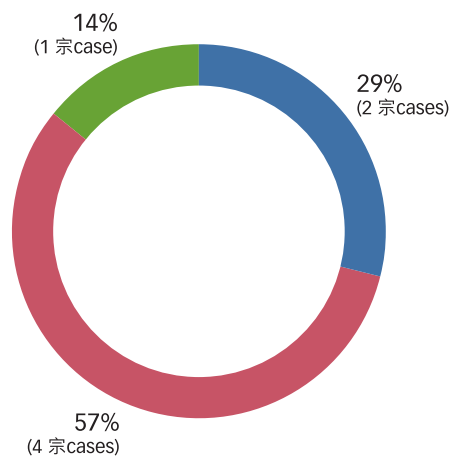
- 保障資料第1原則 — 過度或不公平收集個人資料
 DPP1 – excessive or unfair collection of personal data
- 保障資料第3原則 — 使用或披露個人資料
 DPP3 – use or disclosure of personal data
- 保障資料第4原則 — 個人資料的保安
 DPP4 – security of personal data

LEGAL ASSISTANCE SCHEME

The Legal Assistance Scheme commenced on 1 April 2013. Under the scheme, the PCPD may provide assistance to a person who has suffered damage by reason of a contravention of the Ordinance and intends to seek compensation from the organisation at fault. In 2014, the PCPD received seven new applications for legal assistance, of which 86% (i.e. six cases) were preceded by a complaint lodged with the PCPD.

These applications involved alleged contraventions of the Ordinance in respect of (i) the excessive or unfair collection of personal data; (ii) the use or disclosure of personal data; or (iii) the security of personal data.

Figure 4.4: Nature of alleged contraventions



本年內公署處理了12宗申請（包括2013年未完成的五宗）。在這些申請中，公署完成了11宗，一宗申請在年結時仍在考慮中。

During the year, the PCPD handled 12 applications (including five carried forward from 2013). Of these applications, 11 were completed by the PCPD during the year, and one was still under consideration as at the year end.

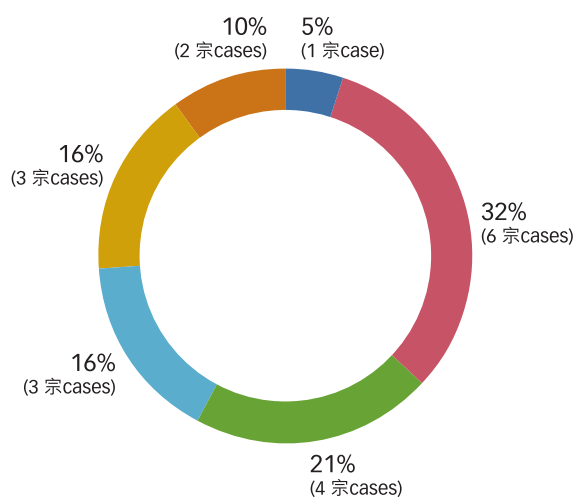
在已完成的11宗個案中，一宗獲給予法律協助，10宗被拒。申請被拒的主要原因包括：未能舉出證據證明蒙受損害，及沒有表面證據證明違反條例。拒絕給予法律協助的原因見圖4.5。

Of the 11 cases completed, one was granted legal assistance and 10 were refused. The main reasons for refusal were the failure to provide evidence to substantiate any damage suffered and the absence of *prima facie* evidence of contravention of the Ordinance. The reasons for refusal to grant legal assistance are summarised in Figure 4.5.

圖4.5：法律協助申請的結果

Figure 4.5: Outcome of legal assistance applications

- 提供協助
Assistance granted
- 拒絕（沒有證據蒙受損害）
Refused (No evidence to substantiate damage)
- 拒絕（沒有表面證據證明違規）
Refused (No *prima facie* contravention)
- 拒絕（期望申請人在沒有協助下處理有關個案不是不合理）
Refused (Not unreasonable to expect the applicant to deal with the case unaided)
- 拒絕（有其他提供協助的途徑）
Refused (Other sources of assistance are available)
- 拒絕（不涉及法律原則）
Refused (Not involve a question of legal principle)



關於2013年已獲批法律協助的個案，外聘的律師認為法律申索成功機會很微，個案已於2014年結束。至於2014年已獲批法律協助的個案，在年結時尚未有申索補償金額的結果，亦未展開法庭程序。

The legal assistance case granted in 2013 was discharged in 2014 upon the advice of our outsourced solicitors that the chance of a successful legal claim was slim. Regarding the legal assistance case granted in 2014, no outcome as regards the amount compensation payable had been reached and no court proceedings had commenced as at the end of the reporting year.