

加強 法律保障 Enhancing Legal Protection

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.



檢視公共登記冊

私隱專員於2015年7月28日發表一份報告，該報告檢視由政府及公共機構營運的10個常用公共登記冊，當中包括：破產登記冊、出生登記冊、商業登記冊、公司登記冊、土地登記冊、婚姻登記冊、擬結婚通知書登記冊、證監會持牌人紀錄冊、車輛登記冊及選民登記冊。私隱專員是參考政府於2000年12月30日就保障現有及新公共登記冊的個人資料而發出的一套指引（「指引」）來檢視上述登記冊內的個人資料是否得到合適保障。私隱專員亦檢視了於2001年1月1日至2014年3月31日制定或修訂而載有與公共登記冊有關條文的82條法例及相關的規例，以核實遵從該指引的程度。

公共登記冊內的個人資料是受到條例的保障，尤其是使用從公共登記冊所收集的個人資料是受條例附表1的保障資料第3原則規管。該原則規定，除非獲得資料當事人明確和自願的同意，否則個人資料只可用於收集資料的目的或直接有關的目的。換言之，從公共登記冊所收集的個人資料一般只可用於與設立公共登記冊的目的或一致或有關的目的。

該指引建議所有訂立公共登記冊的法例應盡量明確地訂明其建立的目的，亦建議法例中應包括以下條文：(a) 就不當使用個人資料施加制裁；(b) 訂明閱覽資料的目的，並限制要求閱覽的人士之類別；及(c) 要求閱覽的人士以書面聲明有關資料擬作出的用途。

調查結果

調查的主要結果如下：

檢視條例及相關的規例

- 在2001年1月1日至2014年3月31日制定或修訂而載有與公共登記冊有關條文的82條法例中，只有32條說明發放個人資料的目的，及該資料可被使用的範圍；及
- 只有5條法例明確訂明防止個人資料被濫用的措施。

SURVEY OF PUBLIC REGISTERS

The Commissioner published a report on 28 July 2015 in respect of a survey of 10 commonly-used public registers maintained by the government and public bodies, namely, Bankruptcy register, Births register, Business register, Companies register, Land registers, Marriage register, register of Notice of Intended Marriage, SFC register of Licensed Persons, register of Vehicles and registers of Electors. The protection of the personal data contained in these registers was examined with reference to a set of guidelines on the protection of personal data in relation to existing and new public registers formulated by the government on 30 December 2000 (the "Guidelines"). In order to ascertain the extent of compliance with the Guidelines in general, the Commissioner also examined 82 ordinances and related regulations enacted or amended during the period from 1 January 2001 to 31 March 2014 which contain provisions relating to public registers.

Personal data in the public registers is subject to the protection under the Ordinance. In particular, the use of personal data collected from the public registers is governed by DPP3 in Schedule 1 of the Ordinance which limits the use of personal data for the purposes for which it was collected or a directly related purpose, unless the explicit and voluntary consent of the data subject is obtained. In other words, the personal data collected from a public register can generally be used only for purposes in line with or directly related to the purpose(s) of setting up the public registers.

The Guidelines advise that the purposes of a public register should be stated as specifically as practicable in the legislation that establishes it. The Guidelines also advise provisions in the legislation to include: (a) the sanctions imposed against the improper use of the personal data; (b) the specified purposes for which the data may be requested, and the class of persons entitled to make requests; and (c) the requestors' declaration in writing for the intended use of the information requested.

Observations in the Survey

The survey concluded with the following major observations:

Examination of ordinances and related regulations

- Only 32 of the 82 public register-related legislation newly enacted or amended from 1 January 2001 to 31 March 2014 spelled out the purposes of the publication of the data and/or the permissible use or secondary use of such data; and
- Only five of these legislation contained explicit provisions introducing measures to safeguard against possible misuse of the personal data.

檢視10個常用公共登記冊

- 10個公共登記冊中，只有四個在相關條文中述明登記冊的目的；
- 10個公共登記冊中，只有一個列明法例的保障，防止資料被濫用；餘下九個僅有一個登記冊提供行政措施的保障；
- 在防止資料被濫用上，缺乏立法或行政措施的保障是特別令人擔憂的，原因是大多數的公共登記冊營運者都沒有酌情權，不能拒絕任何查閱資料的要求；
- 在三個營運者擁有酌情權的公共登記冊中，有兩個未有訂明如何行使酌情權的政策；
- 10個公共登記冊均有向資料當事人表明登記冊的目的，但可以再作改善，向資料當事人及公眾提供更清晰和充足的資訊；
- 破產登記冊、商業登記冊及婚姻登記冊均沒有清晰訂明會向公眾披露資料；
- 就擬結婚通知書登記冊而言，使用在婚姻登記處現場的電腦查閱擬結婚通知書的過程當中，並沒有向公眾人士提述查閱該登記冊的目的；及
- 至於網上查閱公共登記冊方面，該指引只要求營運者在其網頁上加入有關登記冊的特定目的及使用限制，因而未能確保查閱人士是否已經閱讀及明白網頁上的訊息。



建議

該10個常用公共登記冊大體上均按照法律而執行，備有收集個人資料聲明及需由資料查閱者確認查閱的目的，但仍有進步的空間。

使用從公共登記冊收集的個人資料應依從登記冊所訂明的目的。訂立公共登記冊的法例欠缺訂明目的，對私隱專員的執法構成障礙。

Examination of the 10 commonly-used public registers

- Only four out of the 10 registers had the purposes of the registers specified in the respective legislation;
- Only one out of the 10 registers had legislative safeguards against misuse of data and only one out of the remaining nine registers provides for administrative safeguards;
- The lack of legislative or administrative safeguards against data misuse was particularly worrying as most of the operators of the registers have no discretion to reject a request for data access;
- For two out of the three registers which the operators had discretionary power to decide on the provision of specific kinds of personal data upon request, there were no laid down policies governing the exercise of the discretion;
- While data subjects were informed by all 10 registers of the purposes of the registers, the clarity and adequacy of the notification given to data subjects and the public could be improved;
- For the Bankruptcy register, the Business register and the Marriage register, there was no specific mentioning that the data could be made available to the public;
- For the Marriage register, no reference was made to the purpose of inspection of the notices throughout the process of inspection which took place in the Marriage Registries by reviewing the webpages of onsite computers; and
- For online access to a public register, the Guidelines only required the home page to include the specified purposes of the register and the use limitations, thus falling short of ensuring that the requestor did read and understand this home page message.

Recommendations

In general, the 10 commonly-used registers were administered in accordance with the law and had personal information collection statement and statement of purposes to be acknowledged by searchers, but there was room for improvement.

The use of personal data collected from a public register should comply with the stated purpose of the register. The lack of a purpose specified in the establishing legislation for the public registers posed an enforcement hurdle for the Commissioner.

私隱專員建議政府應建立一個專門的組織架構及機制，以審視及監察政府各政策局和部門遵守該指引的情況，特別關於所需的立法或修訂。私隱專員亦建議於法律起草的過程中，引入「個人資料之符合條文」，與「人權法之符合條文」及「基本法之符合條文」看齊，並委派律政司擔當把關的角色，以確保在未來的法例制定及修訂過程中，慎重考慮納入公共登記冊的特定目的。

私隱專員已把這份檢視報告及建議送交給有關政府決策局及部門，要求他們因應建議檢討各登記冊現時的做法。

檢視報告全文（只備英文版）：
www.pcpd.org.hk/english/resources_centre/publications/surveys/files/survey_public_registers.pdf

The Commissioner recommended the government should establish a dedicated organisational structure and mechanism to oversee and monitor compliance with the Guidelines by the various government bureaux and departments, particularly in regard to the required legislative enactment or amendment. The Commissioner also recommended a “personal data clearance clause” in the law drafting process, in line with the “human rights clearance clause” and the “basic law clearance clause” be introduced, and the Department of Justice be assigned to take up the gate-keeper role to ensure that serious consideration would be given in future legislative enactment or amendment processes to incorporate the specific purposes of public registers.

The Commissioner forwarded the survey report to the relevant government bureaux and departments, with recommendations on compliance with the Guidelines. They were requested to review the existing practices of the various registers in light of the recommendations.

The full survey report:
www.pcpd.org.hk/english/resources_centre/publications/surveys/files/survey_public_registers.pdf

感言 Sharing

我於2008年加入公署擔任律師。自備受廣泛報道有關售賣顧客資料的事件後，公眾對個人資料私隱的意識大幅提高。其後，我有機會參與檢討條例的法律工作，最終《個人資料(私隱)(修訂)條例》於2012年實施。近年，我亦負責一些主要的計劃及新項目，包括《保障個人資料：跨境資料轉移指引》、檢視政府及公營機構營運的公共登記冊的報告，以及就《電子健康紀錄互通系統條例》向政府及立法會法案委員會提交意見書/評論。

我在公署的發展取得滿意的成果。我現在成為公署的主要職員，擔任高級律師，協助帶領一組律師為公署提供法律諮詢服務、處理訴訟工作，以及向持份者和不同界別的專才解釋我們的政策。加入公署工作擴闊了我的見聞和視野。公署同事能幹及各有所長，我很高興能成為當中一份子。

I joined the PCPD as Legal Counsel in 2008. The public awareness in relation to personal data privacy has arisen since a widely reported incident involving the sale of customers' data. Thereafter, I was given the opportunities to participate in the review of the Ordinance, which culminated in the enactment of the Personal Data (Privacy) (Amendment) Ordinance in 2012. In recent years, I have also taken charge of some major projects and new initiatives including the Guidance on Personal Data Protection in Cross-Border Data Transfer, the Survey Report of Public Registers Maintained by Government and Public Bodies, and rendered submissions/comments to the government and the Legislative Council Bills Committee in relation to the Electronic Health Records Sharing System Ordinance.

My career here is fruitful and satisfying. I now assist in leading a team of lawyers to provide legal advisory services to the PCPD as Senior Legal Counsel, handling litigation related work and explaining our policies to stakeholders as well as elites with different expertise. Joining the PCPD has broadened my exposure and horizon. I am glad to be part of such a capable and diverse team.



廖以欣
 高級律師
 Sandra LIU
 Senior Legal Counsel

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的決定而提出的上訴，並作出裁決。

在2015至2016年度決定的 / 接獲的行政上訴案件的統計資料

本年度共有30宗上訴個案完結，及接獲35宗新提出的上訴個案。

大部分的上訴個案最終都被行政上訴委員會駁回或由上訴人撤回。(圖4.1)

APPEALS LODGED WITH THE ADMINISTRATIVE APPEALS BOARD

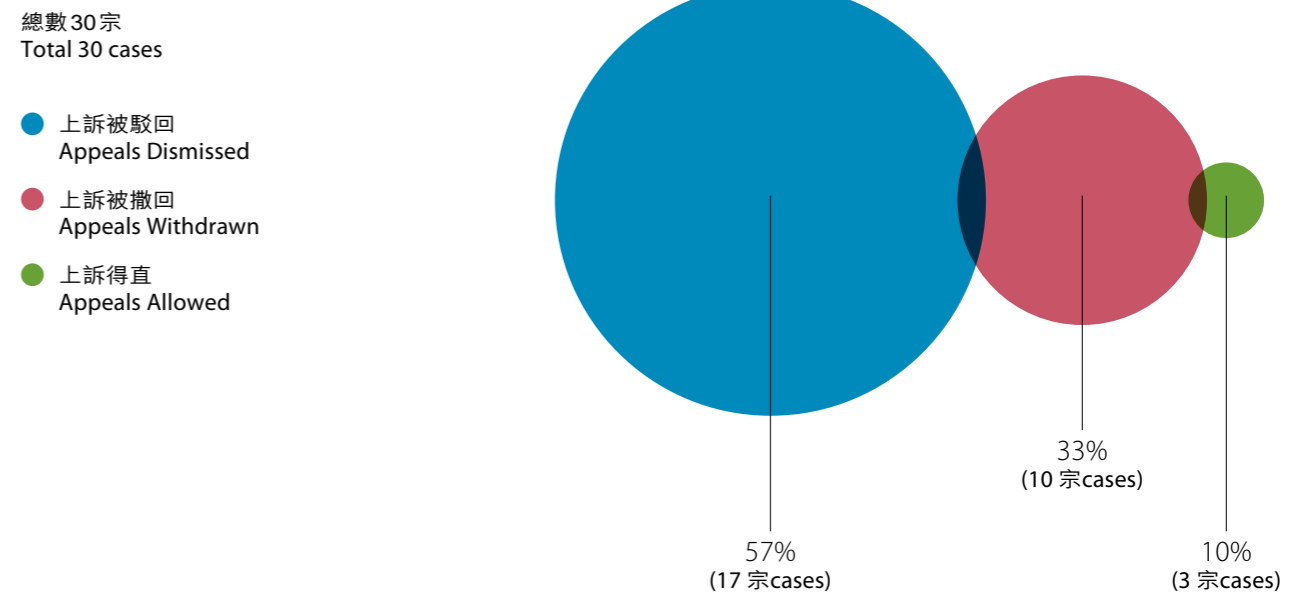
The Administrative Appeals Board (“AAB”), established under the Administrative Appeals Board Ordinance (Cap 442), is the statutory body that hears and determines appeals against the Commissioner’s decisions by a complainant, or the relevant data user complained of.

Statistics of AAB Cases Concluded / Received in the Year 2015 - 2016

A total of 30 appeals were concluded and 35 new appeal cases were received during the report year.

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

圖Figure 4.1 上訴的結果
 Result of appeal cases



在本年度接獲的35宗新上訴個案中，30宗是上訴私隱專員不作正式調查的決定。私隱專員作出該等決定是基於(i)投訴的主要事項與個人資料私隱無關；(ii)沒有表面證據支持指稱的違反行為；(iii)被投訴者已採取補救行動糾正所指稱的違反行為及/或(iv)作出相關投訴時已超過兩年的法定時限。

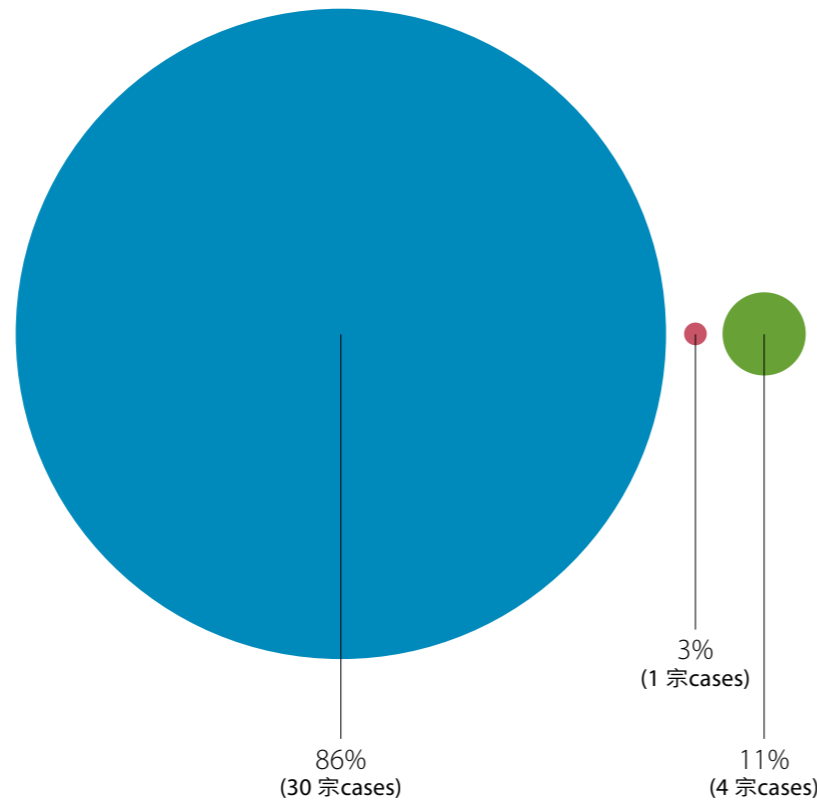
四宗是上訴私隱專員不接納相關個案為條例第37條下的「投訴」的決定。

餘下的一宗是上訴私隱專員在作出調查後不送達執行通知的決定而提出的上訴。(圖4.2)

圖 Figure 4.2 上訴所涉的性質
Nature of the appeals

總數 35 宗
Total 35 cases

- 針對私隱專員決定不進行正式調查的上訴
Appeals against the Commissioner's decision not to carry out a formal investigation
- 針對私隱專員調查後決定不送達執行通知的上訴
Appeals against the Commissioner's decision not to serve an enforcement notice after the investigation
- 針對私隱專員不接納個案為投訴
Appeals against the Commissioner's decision not to accept the relevant cases as a complaint



Of the 35 new appeal cases received in the year, 30 of which appealed against the Commissioner's decision not to carry out a formal investigation. The Commissioner made these decisions based on the following: (i) the primary subject matter of the complaint was considered not to be related to personal data privacy; (ii) there was no prima facie evidence to support the alleged contravention; (iii) the party complained against had taken remedial action to rectify the alleged contraventions and/or (iv) the two-year statutory time limit had lapsed when the relevant complaint was made.

Four appeals were against the Commissioner's decision not to accept the relevant cases as a "complaint" under section 37 of the Ordinance.

The remaining appeal was against the Commissioner's decision not to serve an enforcement notice after the investigation. (Figure 4.2)

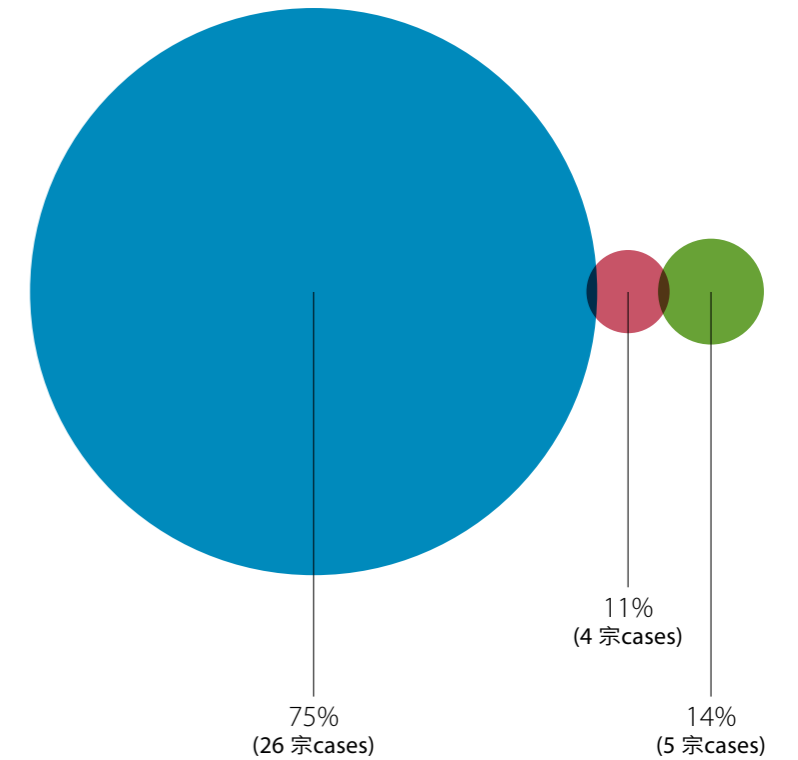
在35宗新上訴個案中，26宗涉及指稱違反條例的保障資料原則。四宗涉及指稱不依從查閱資料要求及/或改正資料要求。其餘五宗則關於個案是否涉及個人資料。(圖4.3)

Of these 35 new appeal cases, 26 involved alleged breaches of the DPPs of the Ordinance. Four cases involved alleged non-compliance with data access request and/or data correction request, and the remaining five cases concerned about whether or not personal data was involved. (Figure 4.3)

圖 Figure 4.3 上訴所涉及的條例的規定
The provisions of the Ordinance involved in the appeals

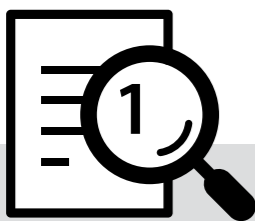
總數 35 宗
Total 35 cases

- 違反資料保障原則
Contraventions of DPPs
- 不遵從資料查閱要求及/或資料改正要求
Non-compliance with data access request and/or data correction request
- 是否涉及個人資料
Whether personal data was involved



有關指稱違反保障資料原則的26宗上訴中，一宗個案可牽涉多於一項保障資料原則。當中有八宗涉及超乎適度及/或不公平收集個人資料；五宗涉及個人資料的保留期間；15宗涉及未經資料當事人同意下使用及/或披露其個人資料；六宗涉及個人資料的保安及兩宗涉及資料使用者的私隱政策及實務。

Of those 26 appeal cases involving the alleged contraventions of DPPs, one appeal might involve more than one principle. Of these appeals, eight cases involved excessive and/or unfair collection of personal data; five involved the duration of retention of personal data; 15 involved the use and/or disclosure of personal data without the data subject's prior consent; six involved security of personal data and two involved the data user's privacy policies and practices.



上訴個案簡述一（行政上訴委員會上訴案件第 54/2014 號）

上訴人因不滿私隱專員向他發出執行通知，指令他在其網站刪除三條披露投訴人在三宗匿名判決書中的身份的超連結，而提出上訴。行政上訴委員會維持公署作出的決定，即上訴人在其網站內刊載有關的超連結，違反了條例的保障資料第3原則的規定，並裁定發出執行通知是適當的。

投訴內容

投訴人是數個法定委員會的成員。法庭在公開聆訊她的離婚訴訟後於2000、2001及2002年頒下三份判決書。這些判決書原本載有投訴人、其前夫及子女的姓名，並可在司法機構的法律參考資料系統查閱得到。不過，在2010及2012年，司法機構應投訴人的要求，從該系統的分份判決書隱去他們的姓名。

在2013年初，投訴人發現在上訴人經營的網站的「Who's Who」內三條載有她的姓名的超連結，可以分別聯繫到司法機構的法律參考資料系統內該三宗已被匿名化的判決書。使用者若在上訴人網站的「search people」一欄輸入投訴人的姓名，使用者便會被帶往「Who's Who」的版面。該版面會顯示投訴人的資料，而該三宗判決則放在「Articles」的項目內。只要按下「Articles」，具有判決書標題（提述投訴人及其前夫的姓名）的三條超連結便會出現。儘管該三宗判決書已隱去投訴人的姓名，但這個搜尋程序實際上卻令投訴人的身份曝光。

2013年3月，投訴人去信上訴人要求刪除有關超連結被拒。她於是向私隱專員投訴上訴人在該網站披露她的個人資料。

私隱專員的決定

私隱專員在完成調查後，認為上訴人違反了保障資料第3原則的規定。2014年

APPEAL CASE NOTE ONE (AAB APPEAL NO. 54 OF 2014)

The Appellant appealed against the Commissioner's enforcement notice directing him to remove from his website three hyperlinks which disclosed the complainant's identity in three anonymised judgments. The AAB upheld the Commissioner's decision that the Appellant had contravened Data Protection Principle 3 of the Ordinance by publishing the hyperlinks on the Appellant's website and determined that the enforcement notice was properly issued.

The Complaint

The complainant was a member of several statutory panels. Three judgments were handed down in 2000, 2001 and 2002 concerning her divorce proceedings heard in open court, and these judgments, which originally contained the names of the complainant, her ex-husband and her children, were made available by the Judiciary in the Legal Reference System ("LRS"). However, in 2010 and 2012, the Judiciary replaced the three judgments in the LRS with their names anonymised at the request of the complainant.

In early 2013, the complainant found her name revealed on three hyperlinks on "Who's Who" of a website operated by the Appellant, which were connected to the three anonymised judgments in the LRS. If a user entered the complainant's name in the "search people" box of the Appellant's website, the user would be brought to the "Who's Who" page of the same website where information about the complainant would be shown. However, on this "Who's Who" page, the three hyperlinks were embedded under the item "Articles", and by clicking on "Articles", the three hyperlinks with the judgments' titles (referring to the names of the complainant and her former husband) would appear. This search process effectively identified the complainant by name in those three judgments, despite the anonymisation in them.

In March 2013, the complainant wrote to the Appellant for deletion of the hyperlinks but her request was declined. She then lodged a complaint with the Commissioner against the Appellant in disclosing her personal data on the said website.

The Commissioner's Decision

Upon completion of the investigation of the complaint, the Commissioner concluded that the Appellant had contravened the

8月，私隱專員向上訴人送達調查結果及執行通知，指令他從該網站刪除該三條超連結，並提交書面確認及證據證明他已依從命令。

上訴人不滿私隱專員的決定，遂向行政上訴委員會提出上訴。

上訴

• 理據一

上訴人辯稱保障資料第3原則中的「目的」是指資料收集者的目的。由於上訴人認為自己是「資料收集者」，他從該三份判決書收集個人資料的目的包括在其網站刊登有關資料。這個目的在任何時間也沒有改變。上訴人援引行政上訴委員會上訴案件第36/2007號支持其論點。

行政上訴委員會認為保障資料第3原則第(4)款的「在收集該資料時擬將該資料用於的目的」指當初收集該資料時的目的。在本個案，原本目的指作為首個收集有關資料者即司法機構的目的。

行政上訴委員會並不同意上訴人使用投訴人的個人資料的目的（即一般報道及刊登用途）符合司法機構刊登有關判決書的目的（即讓其判決書可用於「作為法律觀點、法庭實務和程序的法律先例，並且關乎公眾利益」的用途）。沒有證據證明上訴人的目的與法律有關。由於上訴人把有關個人資料用於「新目的」，私隱專員裁定上訴人違反保障資料第3原則是正確的。

• 理據二

上訴人援引上訴法庭在TCWF v LKKS（民事上訴案件2012年第154 & 166號）一案的判決書第30及32段，辯稱除非法庭發出特定的禁制令，否則如訴訟雙方的身份已被公開，刊登他們的姓名並不違法。

行政上訴委員會留意到在TCWF v LKKS一案的判決書中，並無提述條例或保障資料第3原則，這意味該案沒有提及保障個人資料的問題，及上訴法庭沒有考

requirement of DPP3. In August 2014, the Commissioner served on the Appellant the result of investigation and an enforcement notice directing him to remove the three hyperlinks from the website and to confirm his compliance in writing together with supporting evidence.

Dissatisfied with the Commissioner's decision, the Appellant lodged an appeal to the AAB.

The Appeal

• Ground One

The Appellant argued that the "purpose" in DPP3 referred to the purpose of the data collector. As the Appellant regarded himself as the "data collector", his purpose of collecting personal data from the three judgments included publication of the data on his website. This purpose did not change at any time. The Appellant cited AAB No.36/2007 in support of this ground.

The AAB considered that in subsection (4) of DPP3, the phrase "the purpose for which the data was to be used at the time of the collection of the data" referred to the purpose for which the data was originally collected. In this case, such original purpose referred to the purpose of the Judiciary being the person who first collected the relevant data.

The AAB did not agree that the Appellant's purpose of using the complainant's personal data (i.e. reporting and publication for general use) could be said to be consistent with the Judiciary purpose of publishing the judgments (i.e. to enable their judgments to be utilised as "legal precedents on points of laws, practice and procedure of the courts and of public interests"). There was nothing to suggest that the Appellant's purpose was in any way related to the law. As the Appellant used the relevant personal data for a "new purpose", the Commissioner was correct in concluding that the Appellant had contravened DPP3.

• Ground Two

Relying on paragraphs 30 and 32 of the Court of Appeal's judgment in TCWF v LKKS (CACV 154 & 166/2012), the Appellant contended that unless the court granted a specific injunction, it would not be against the law to publish the names of the parties in an action if their identities were known.

The AAB noted that there was no reference to the Ordinance or DPP3 in TCWF v LKKS, which suggested that there was no issue of personal data protection and that the Court of Appeal was not concerned with the application of any

慮到條例條文的應用。行政上訴委員會並不認為該判決書的有關段落，就違反保障資料第3原則的行為提供任何辯解或豁免。

• 理據三

上訴人辯稱如保障資料第3原則限制重複使用公共領域的個人資料，該限制會是違憲的，因為這違反了《基本法》第27條及《香港人權法案》第16(2)條的規定（即新聞及言論自由）。

行政上訴委員會相信私隱專員已就新聞及言論自由與投訴人的個人資料私隱作出平衡。行政上訴委員會認為私隱專員在作出相關平衡後，最後的結論是傾向保障投訴人在三宗已匿名的判決中的個人資料私隱，這並非不合理。

• 理據四

上訴人認為私隱專員錯誤地詮釋「資料使用者」一詞，把只是在公共領域閱覽資料或從公共領域收集及整合資料的人也包括在內。

根據上訴法庭在 Eastweek Publisher Ltd v Privacy Commissioner for Personal Data [2000] 2 HKLRD 83 一案的主要裁決，行政上訴委員會贊同私隱專員的觀點：要符合條例中收集個人資料的定義，收集資料一方必須是藉此匯集某人的資料，但只是在公共領域閱覽資料或從公共領域收集及整合資料的人表面上不算是匯集另一人的資料的人，因此條例的條文並不適用。

此外，行政上訴委員會引用上訴法庭在 Re Hui Kee Chun (民事上訴案件2012年第4號) 一案的裁決作為支持，裁定保障資料第3原則是針對不當使用個人資料，不論相關的個人資料是在別處刊登或是已存在於公共領域。

行政上訴委員會的決定

上訴被駁回。

provisions of the Ordinance in that case. The AAB did not consider the relevant paragraphs in the judgment as providing any defence or exemption to a contravention of DPP3.

• Ground Three

The Appellant argued that if DPP3 restricted the repeated use of public domain personal data, such restriction would be unconstitutional, because it violated Article 27 of the Basic Law and Article 16(2) of the Hong Kong Bill of Rights (i.e. freedom of the press and expression).

The AAB believed that the Commissioner had carried out the exercise of balancing the freedom of press and expression against the personal data privacy of the complainant. The AAB was of the view that the Commissioner's conclusion, after performing the relevant balancing exercise, of tipping in favour of protecting the personal data of the complainant in the three anonymised judgments was not unreasonable.

• Ground Four

The Appellant submitted that the Commissioner had erroneously interpreted the term "data user" to embrace persons who merely read or collected and aggregate personal information in and from the public domain.

Noting what the majority of the Court of Appeal held in Eastweek Publisher Ltd v Privacy Commissioner for Personal Data [2000] 2 HKLRD 83, the AAB agreed with the Commissioner that in order to amount to collection of personal data within the meaning of the Ordinance, the collecting party must be compiling information about an individual, and that a person who merely read or collected and aggregated personal information in and from the public domain was prima facie not considered as compiling information about another individual, and the provisions of the Ordinance did not come into play.

Further, the AAB held that DPP3 was directed against misuse of personal data regardless of whether the relevant personal data had been published elsewhere or was in the public domain, following the Court of Appeal decision in Re Hui Kee Chun (CACV 4/2012).

The AAB's Decision

The appeal was dismissed.



上訴個案簡述二 (行政上訴委員會上訴案件第15/2015號)

上訴人在完成債務重組後要求一間信貸資料機構更新其信貸報告。該信貸資料機構拒絕刪除債務重組的有關紀錄，但加入他已完成債務重組的資料。行政上訴委員會認為該信貸資料機構沒有違反條例，因為它依據了《個人信貸資料實務守則》的相關條文行事。

投訴內容

上訴人向環聯資訊有限公司（「環聯」）提供一份顯示他已於2015年2月2日完成債務重組的證明書的副本，要求環聯刪除債務重組的紀錄以更新其信貸報告。但環聯拒絕刪除債務重組的紀錄，上訴人遂向公署投訴環聯。

私隱專員的決定

私隱專員知悉環聯把「債務重組於2/2/2015完成」這項資料納入上訴人的信貸紀錄，但依據《個人信貸資料實務守則》第3.6.1條拒絕刪除整項債務重組的紀錄。該條款容許信貸資料機構保留債務重組的紀錄，保留時期是在官方紀錄所顯示有關事項的日期起計七年，故私隱專員認為環聯保留上訴人的債務重組紀錄是符合該守則的相關規定及沒有表面證據證明環聯違反條例的規定。私隱專員於是依據條例第39(2)(d)條行使其酌情權，不進一步調查有關事宜。上訴人不滿私隱專員的決定，遂向行政上訴委員會提出上訴。

上訴

上訴人辯稱，由於他的財務狀況已變得健全，因此任何有關債務重組的資料應從環聯的紀錄中刪除。他認為私隱專員為維護所聲稱的公眾利益，損害了他的個人利益，因此對他不公平。他亦質疑該守則相關條款的合理性。

行政上訴委員會贊同私隱專員的觀點，認為該守則是為了平衡公眾利益與個人利益而作出的。行政上訴委員會進一步解釋，該守則是普遍地應用，並沒有特別針對上訴人的不公平情況。爭議點卻是一個人的

APPEAL CASE NOTE TWO (AAB APPEAL NO.15 OF 2015)

The Appellant requested a credit reference agency to update his credit report after completion of his individual voluntary arrangement. The credit reference agency refused to delete the record of the individual voluntary arrangement but included the information that his individual voluntary arrangement was completed. The AAB considered that the credit reference agency had not contravened the Ordinance as it followed the relevant provisions of the Code of Practice on Consumer Credit Data.

The Complaint

The Appellant provided TransUnion Limited ("TU") with a copy of a certificate showing completion of his individual voluntary arrangement ("IVA") on 2 February 2015 and requested TU to update his credit report by deleting the IVA record. The Appellant lodged a complaint with the PCPD against TU upon its refusal to delete the IVA record.

The Commissioner's Decision

The Commissioner noted that TU included the information "IVA completed on 2/02/2015" in the Appellant's credit record but refused to delete the full IVA record in reliance of Clause 3.6.1 of the Code of Practice on Consumer Credit Data ("the Code"). As the said clause permitted a credit reference agency to retain the IVA record for seven years from the date of the event shown in the official record, the Commissioner found that the retention of the Appellant's IVA record by TU was consistent with the said requirement of the Code and there was no prima facie evidence of contravention of the requirements under the Ordinance. The Commissioner then exercised his discretion not to investigate the matter further pursuant to section 39(2)(d) of the Ordinance. Dissatisfied with the Commissioner's decision, the Appellant lodged an appeal to the AAB.

The Appeal

The Appellant argued that as he had become financially sound, any reference to the IVA should be deleted from TU's record. He considered that the Commissioner's claim of public interest was promoted at the expense of his private interest and thus was unfair to him. He also queried the rationality of the relevant clauses of the Code.

The AAB agreed with the Commissioner that the Code was the product of striking a balance between public interest and private interest. The AAB further explained that the Code had general application and there was no unfairness specifically directed to the Appellant. The issue was only to what extent one's credit

信貸報告應包含多少信貸歷史。但是，行政上訴委員會認為重寫或檢討該守則並非它的職能或管轄權之內，上訴人須從別處尋求濟助。

行政上訴委員會亦留意到該守則為資料使用者定下指引。如資料使用者不依從該守則，他必須證明即使不依從該守則仍是沒有違反條例的規定。直接推論就是，在某些特別的情況下，僅是依從該守則未必可免除資料使用者的責任。行政上訴委員會認為沒有合理的理據致令環聯偏離該守則相關的條款從信貸報告刪除債務重組的紀錄，因為信貸歷史是重要的資料，讓信貸提供者評估向某人提供信貸的風險。

行政上訴委員會認為私隱專員的決定正確，沒有錯誤。

行政上訴委員會的決定

上訴被駁回。

history should be contained in the credit report, and the AAB found that it was not the function or jurisdiction of the AAB to rewrite the Code or to review it and such relief had to be sought elsewhere.

The AAB further noted that the Code laid down guidelines for data users. If a data user did not follow the Code, he had to justify that his departure from the Code was nonetheless not in breach of the Ordinance. As a corollary, there might be exceptional circumstances under which mere compliance with the Code might not exonerate a data user. The AAB considered that there were no valid grounds for TU to depart from the relevant clauses of the Code and delete the IVA record from the credit report, as the credit history was an essential element for a credit provider to assess the risk of extending credit to an individual.

The AAB concluded that the decision of the Commissioner was correct and could not be faulted.

The AAB's Decision

The appeal was dismissed.



新入職員工 Newcomer

由於科技急速發展，我們日常生活的各方面均依賴智能裝置。與此同時，公眾對保障個人資料私隱權利的意識亦升至新高。因此，我認為資料私隱將會是發展迅速及前景良好的一門專業。

香港是亞洲中最早制定全面的資料私隱法律的地區。我很榮幸能夠成為公署法律部的一員。我很高興以往在處理民事及刑事訴訟所累積的經驗和技能，有助我為公署提供法律意見及處理行政上訴的工作。我亦感激知識豐富的同事對我的耐心指導和支持。我期望在公署發展我的事業，並透過各種不同的機會，增加我在這個既特別又有趣的法律範疇的技能和知識。

Owing to rapid technological advancement, most of us rely heavily on smart gadgets in different aspects of our daily life. At the same time, the public awareness on the protection of personal data privacy rights has also heightened to a new peak. Hence, I am of the view that data privacy is an up-and-coming area of practice for specialisation and a fast evolving area of the law.

Hong Kong has the longest established comprehensive data privacy law in Asia. I am proud of becoming a member of the PCPD's Legal Division. I am happy to find that my past experience and skills in handling civil and criminal litigations useful for rendering internal advice as well as handling administrative appeals. I am also grateful for the patience, guidance and support my fellow knowledgeable colleagues have given me. I look forward to developing my career in the PCPD and polishing my skills and knowledge in this special and interesting area of the law through the diverse opportunities given.

黃靜思
律師
Joyce WONG
Legal Counsel



上訴個案簡述三（行政上訴委員會上訴案件第18/2015號）

上訴人投訴其僱主從司法機構的網站收集其個人資料，並使用有關資料對他採取紀律處分。行政上訴委員會考慮到該僱主的責任，認為該僱主從公共領域收集上訴人的個人資料屬合理，而其後使用有關資料可獲豁免受條例規管。

投訴內容

上訴人是一名公務員，在一政府部門（「該部門」）工作。他投訴該部門從司法機構網頁上的審訊案件表及相關上訴的判決書內濫收他在一宗刑事案件的資訊，並其後於該部門的內部調查及紀律處分中使用。上訴人亦投訴該部門拒絕向他提供一宗匿名舉報的資料，該匿名舉報引致該部門對他進行上述的內部調查。

私隱專員的決定

因上訴人是受該部門的政策規管，須向該部門報告對他提起的刑事法律程序，該部門查閱審訊案件表是為了核實該宗匿名舉報所指稱的刑事法律程序的準確性，及決定應否對上訴人採取紀律處分。該部門其後下載上訴人的上訴個案判決書，是為了監察上訴人的刑事案件的進展及考慮對上訴人所需採取的行動。私隱專員在考慮該部門上述的責任後，認為有關該部門收集上訴人在審訊案件表及判決書內的個人資料並沒有違反條例的保障資料原則的規定。

私隱專員進一步認為該部門其後把審訊案件表及判決書內上訴人的資料用於對上訴人進行紀律處分，是與收集有關個人資料的原本目的直接有關，即按公務員指引及規例對上訴人採取行動。因此，私隱專員

APPEAL CASE NOTE THREE (AAB APPEAL NO. 18 OF 2015)

The Appellant complained against his employer for collecting and using his personal data obtained from the Judiciary's website in taking disciplinary action against him. The AAB concluded that the employer's collection of the Appellant's personal data from the public domain was justified having regard to its obligations and that the subsequent use of the data was exempted under the Ordinance.

The Complaint

The Appellant was a civil servant working in a government department ("the Department"). He complained about the Department's abusive collection of his information in a criminal case from the Daily Cause List of the Judiciary's website and the judgment of the relevant appeal and its subsequent use of such information in its internal investigation and disciplinary action against him. The Appellant also complained that the Department had refused to provide him with information about the anonymous report which led to the Department's said internal investigation against him.

The Commissioner's Decision

As the Appellant was bound by the Department's policy to report criminal proceedings instituted against him, the Department's access to the Daily Cause List was for the purpose of verifying the accuracy of any such criminal proceedings as alleged in the anonymous report and determining if disciplinary action should be taken against him. The subsequent downloading by the Department of the judgment of the Appellant's appeal case was to monitor the development of the Appellant's criminal case and to consider necessary action to be taken against him. Having regard to the aforesaid obligation of the Department, the Commissioner was of the view that the Department's collection of the Appellant's personal data contained in the Daily Cause List and the judgment did not contravene the Data Collection Principles of the Ordinance.

The Commissioner further decided that the Department's subsequent use of the Appellant's data in the Daily Cause List and the judgment in conducting disciplinary action against the Appellant was directly related to the original collection purpose of the personal data in question, i.e. for proceeding with actions

認為上訴人對該部門使用其個人資料的投訴不能確立。

私隱專員認為根據條例該部門沒有責任向上訴人提供該匿名舉報的資料。上訴人向該部門發出便箋詢問該部門如何得悉他的刑事案件及要求相關資料或文件並不構成條例下的查閱資料要求。

最後，私隱專員留意到上訴人作出投訴時已實際知道被投訴的作為超過兩年，因而認為延誤提出投訴並不合理，故此決定不再繼續處理該宗投訴。

上訴人不滿私隱專員的決定，遂向行政上訴委員會提出上訴。

上訴

上訴人投訴 (i) 私隱專員的決定違背他在「起你底」一案所作的調查報告 (即報告編號 R13-9744*)，及 (ii) 要求該匿名舉報的資料是條例第 18 條下的查閱資料要求。

行政上訴委員會認同私隱專員以上訴人延誤提出投訴作為理據，拒絕繼續處理上訴人的投訴是合理的。行政上訴委員會認為就該部門查閱審訊案件表方面，上訴人在提出投訴時，已有兩年多時間實際知道該部門查閱審訊案件表。在考慮上訴人關於延誤的解釋及論據後，行政上訴委員會認為上訴人沒有就其延誤提供合理的解釋，而上訴人所投訴的事宜並不超越當事人以外而帶來深遠影響，或普遍地對在類似情況的其他人造成影響。

就該部門下載判決書及其後把資料用於對上訴人採取紀律處分，行政上訴委員會接納私隱專員的論點，認為條例第 58(2) 條的豁免適用於有關的個人資料，該些資料是被用以糾正 (包括懲處) 上訴人的嚴重不當行為。行政上訴委員會尤其認為該部門已符合條例第 58(2) 條下的「損害測試」，因為依從規定向將受懲處的人 (即上

against the Appellant in accordance with civil service guidelines and regulations. The Commissioner therefore considered that the Appellant's complaint over the Department's use of his personal data was unsubstantiated.

The Commissioner considered that the Department was not obliged under the Ordinance to provide the anonymous report to the Appellant. The Appellant's memos to the Department enquiring on how the latter learned about his criminal case and requesting for associated information or document did not constitute data access requests under the Ordinance.

Lastly, it was noted that the Appellant had actual knowledge of the acts complained of for more than two years by the time the complaint was lodged. The Commissioner did not consider that the delay in lodging the complaint was justified and hence decided not to pursue the complaint further.

Dissatisfied with the Commissioner's decision, the Appellant lodged an appeal with the AAB.

The Appeal

The Appellant complained that (i) the Commissioner's decision was inconsistent with his investigation report in the "Do No Evil" case (i.e. Report No.: R13-9744*) and (ii) the request for the anonymous report was a data access request under section 18 of the Ordinance.

The AAB ruled that the Commissioner was justified in refusing to pursue the Appellant's complaint further on the ground of delay in lodging the complaint. The AAB was of the view that insofar as the Department's access to the Daily Cause List was concerned, the Appellant had, at the time of lodging the complaint, actual knowledge of the Department's access to the List for more than two years. Having considered the Appellant's explanation for delay and arguments, the AAB found that the Appellant had failed to provide reasonable explanation for his delay, and the matters arising out of the Appellant's complaint were not those that might have far-reaching implications beyond the immediate parties themselves or that would generally affect others who might be in similar situations.

With regard to the Department's downloading of the judgment and its subsequent use of the same in taking disciplinary action against the Appellant, the AAB accepted the Commissioner's argument and held that the exemption under section 58(2) of the Ordinance was applicable in that the data in question had been used for the remedying (including punishment) of seriously improper conduct by the Appellant. In particular, the AAB found that the Department had satisfied the "prejudice

訴人) 尋求同意，使用其個人資料於紀律處分中，或會妨礙甚至削弱該紀律處分的有效性。

行政上訴委員會認為私隱專員於「起你底」一案的調查結果並無抵觸或影響私隱專員不繼續處理上訴人的投訴的決定。在本個案，該部門使用審訊案件表及判決書對上訴人採取紀律處分；但「起你底」一案是涉及兩間公司為了商業利益在有關個人不知情下從公共領域收集及整理眾多人士的個人資料，兩者是不同的。在應用「起你底」一案的測試後，行政上訴委員會信納一個合理的人處於上訴人的情況 (即一個須按相關規則向僱主報告對他提起的刑事法律程序的公務員)，在考慮到資料的敏感性及收集資料的背景後，不會認為該部門使用審訊案件表及判決書是超乎預期、不恰當或難以接受。

行政上訴委員會亦認為上訴人發給該部門的便箋並不構成條例下的查閱資料要求，因該些便箋當中沒有提及條例、「個人資料」，或「查閱資料要求」。行政上訴委員會認為便箋的語言並無意味便箋的目的是擬確定該部門是否持有上訴人的個人資料及 / 或要求提供已確定該部門持有的上訴人個人資料的複本。

行政上訴委員會的決定

上訴被駁回。

test" under section 58(2) as compliance with the requirement of seeking consent from the person sought to be disciplined (i.e. the Appellant) for the use of his personal data in the disciplinary action might impede or even undermine the effectiveness of the disciplinary action.

The AAB was of the view that the Commissioner's findings in the "Do No Evil" case did not contradict or undermine the Commissioner's decision not to pursue the Appellant's complaint further. Unlike the present case in which the Daily Cause List and the downloaded judgment were used by the Department in taking disciplinary action against the Appellant, the "Do No Evil" case involved the collection and collation of personal data of numerous individuals from public registers by two companies for commercial exploitation without the knowledge of the individuals concerned. Applying the test set out in the "Do No Evil" case, the AAB was satisfied that a reasonable person in the Appellant's situation (i.e. a civil servant bound by the relevant rules to report criminal proceedings instituted against him) would not find the re-use of the Daily Cause List and the judgment by the Department unexpected, inappropriate or otherwise objectionable, taking into account the sensitivity of the data and the context of the data collection.

The AAB also considered the Appellant's memos to the Department not to have constituted data access requests under the Ordinance, as those memos contained no reference to the Ordinance, "personal data", or "data access request". The AAB considered that there was nothing in the language of the memos that suggested they were for the purpose(s) of ascertaining whether the Department held personal data relating to the Appellant and/or requesting for the supply of a copy of any such personal data relating to the Appellant ascertained as being held by the Department.

The AAB's Decision

The appeal was dismissed.

* 調查報告可於 www.pcpd.org.hk/tc_chi/enforcement/commissioners_findings/investigation_reports/files/R13_9744_c.pdf 下載

* The investigation report can be downloaded from www.pcpd.org.hk/english/enforcement/commissioners_findings/investigation_reports/files/R13_9744_e.pdf



上訴個案簡述四（行政上訴委員會上訴案件第39/2015號）

上訴人投訴不明人士在兩個網上平台張貼載有其個人資料的訊息。行政上訴委員會贊同私隱專員的決定，認為上訴人沒有指明被投訴人士的身份，因而不符合條例第37條下「投訴」的定義條件。行政上訴委員會認為它並無司法管轄權審理就私隱專員決定根據條例第37條不處理投訴的上訴。

投訴內容

2015年6月，上訴人指稱在Yahoo及Facebook網站上發現一些毀謗訊息，而當中載有其個人資料，並向私隱專員投訴有關的「幕後人士」。上訴人要求私隱專員調查及確定有關不知名人士的身份。

私隱專員的決定

上訴人表示只有下述資料：(i) 某人在Facebook的「用戶名稱」（不是全名）；及(ii) 一個電郵地址，上訴人認為該人是在上述網站張貼毀謗訊息的不明人士。除此之外，上訴人並沒有其他可讓私隱專員辨識被投訴人士的聯絡資料（例如全名、地址等）。

私隱專員在考慮所得資料及文件後，認為上訴人的投訴並無符合條例第37條下「投訴」的條件，該條規定一個投訴人須指明被投訴的資料使用者。上訴人只提供可讓私隱專員找出「幕後人士」身份的途徑，即Yahoo及Facebook網站，並不符合上述的規定。

因此，私隱專員決定根據條例第37條不處理上訴人的投訴。上訴人不滿私隱專員的決定，遂向行政上訴委員會提出上訴。

APPEAL CASE NOTE FOUR (AAB APPEAL NO. 39 OF 2015)

The Appellant complained against unnamed person(s) who posted certain messages containing her personal data on two online platforms. The AAB agreed with the Commissioner's findings that as the Appellant had failed to specify the identity of the person(s) complained against, the requirement of a "complaint" under section 37 of the Ordinance was not satisfied. The AAB concluded that it had no jurisdiction to deal with an appeal against the Commissioner's decision not to process a complaint under section 37 of the Ordinance.

The Complaint

In June 2015, the Appellant alleged that certain defamatory messages containing her personal data were found on the websites of "Yahoo" and "Facebook" and lodged a complaint with the Commissioner against the "person(s) behind the scene". He requested the Commissioner to investigate into and ascertain the exact identity of the unnamed person(s).

The Commissioner's Decision

The Appellant informed the Commissioner that she only possessed (i) the Facebook "username" of a person (which was not a full name); and (ii) an email address whom the Appellant believed to be the person(s) who posted defamatory messages on the said websites. The Appellant did not have any other contact details (such as full name, address, etc.) which would enable the Commissioner to identify the person(s) being complained against.

Upon considering all the information and documents available, the Commissioner took the view that the Appellant's complaint did not satisfy the requirement of a "complaint" under section 37 of the Ordinance, which required a complainant to specify the data user being complained against. The mere provision by the Appellant of the means which might enable the Commissioner to locate the identity of the "person(s) behind the scene", i.e. the websites of "Yahoo" and "Facebook", was not considered sufficient to satisfy the aforesaid requirement.

The Commissioner therefore decided not to process the complaint under section 37 of the Ordinance. Dissatisfied with the Commissioner's decision, the Appellant lodged an appeal with the AAB.

上訴

行政上訴委員會確立私隱專員的決定，認為上訴人的投訴並不符合條例第37條的規定。行政上訴委員會引用它在上訴案件第32/2004號所作出決定的理據，確認：

- (i) 條例第37(1)(b)(i)條所指的「指明的」資料使用者並不等同「可識別的」的資料使用者。因此，只是提供找出資料使用者身份的途徑，並不足以符合條例第37條下的「投訴」的規定；及
- (ii) 條例第37條及38條並無賦權私隱專員對不符合上述規定的「投訴」進行調查。私隱專員的調查權力與警方及其他執法機構的不同，它們是獲賦權進行調查，追蹤罪犯及／防止罪行發生等。

行政上訴委員會進一步同意裁決關於私隱專員決定根據條例第37條或38條不處理某宗投訴的上訴，是超越行政上訴委員會的司法管轄權，因為《行政上訴委員會條例》（第442章）第3條及附表並沒有容許對私隱專員根據條例第37條或38條所作的決定提出上訴，而條例第37條或38條的條文內，並沒有訂定就這項決定而提出的上訴是由行政上訴委員會審理。

行政上訴委員會的決定

行政上訴委員會因缺乏司法管轄權而駁回上訴。

The Appeal

The AAB confirmed the Commissioner's findings that the Appellant's complaint did not fulfil the requirement under section 37 of the Ordinance. Stating the reasoning in its previous decision (AAB No.32 of 2004), the AAB confirmed, among others, that:

- (i) The meaning of a "specified" data user as stipulated under section 37(1)(b)(i) of the Ordinance was not equivalent to an "identifiable" data user. Hence, the mere provision of the means to locate the identity of the data user was not sufficient to satisfy the requirement of a "complaint" under section 37 of the Ordinance; and
- (ii) The Commissioner was not empowered under sections 37 and 38 of the Ordinance to carry out investigation for a "complaint" which fell short of the aforesaid requirement. The investigation power of the Commissioner was different from that of the Police and other law enforcement agencies whereby they were empowered to carry out investigations to trace the culprit and/or crime prevention, etc.

The AAB further agreed that it would be beyond the AAB's jurisdiction to determine an appeal concerning the Commissioner's decision not to process a complaint premised upon sections 37 or 38 of the Ordinance, as section 3 and the Schedule of the Administrative Appeals Board Ordinance (Cap 442) did not provide for an appeal against the Commissioner's decisions made under sections 37 or 38 of the Ordinance, while the Ordinance was silent on whether an appeal in respect of such decision was within the jurisdiction of the AAB.

The AAB's Decision

The AAB dismissed the appeal for want of jurisdiction.

公署就公眾諮詢所提交的意見書

中環及其鄰近地區電子道路收費先導計劃

運輸及房屋局為收集公眾對政府建議的「中環及其鄰近地區電子道路收費先導計劃」（「該計劃」）的意見，於2015年12月開展了為期三個月的公眾參與活動。公署向政府提交意見書，表示大致上支持該計劃，並建議政府從發展至落實該計劃的過程中應採用「貫徹私隱的設計」方法來控制私隱風險。

收費機制

公署認為有效性、公平及保障私隱程度是考慮哪個收費機制（區域為本或周界為本）較為可取的相關因素。從資料私隱的角度，公署尤其留意到利用衛星科技追蹤收費區內的車輛與公共領域（即車輛登記冊）中的車主個人資料整合、核對及進一步處理，從而得出個人的交通旅程資料，令個人有可能受到監察。因此，公署促請政府在設計該計劃時採取侵犯私隱程度較低的方案。

該計劃的科技

諮詢文件討論了兩種普遍使用的科技（自動車牌識別及短距離微波通訊）。自動車牌識別科技是把進入或離開收費區的所有車輛的車牌拍攝下來，而當車牌與其他從車輛登記冊取得的可識辨車主的資料結合，便可確定車主的個人身份及建立他們的交通旅程資料。公署關注建立某人的交通旅程資料會令該人蒙受較大的私隱風險及自動車牌識別科技或會被執法機構用作維持治安的工具。另一方面，在短距離微波通訊下，車輛需透過預先安裝於車內的裝置即時付款，只有未能完成繳費程序的車輛才會被拍攝。公署認為如該計劃下的車輛透過短距離微波通訊科技以不具名的預繳卡繳費，個人資料私隱可獲較佳的保障。公署請政府提供更多有關短距離微波通訊科技的運作詳情，以進一步評估私隱風險。

遵從條例

公署認為不論該計劃採用哪種科技或收費機制，該計劃的營運者在收集及其後處理個

SUBMISSIONS MADE IN RESPONSE TO PUBLIC CONSULTATIONS

Electronic Road Pricing Pilot Scheme in Central and its Adjacent Areas

The Transport and Housing Bureau commenced a three-month public engagement exercise in December 2015 to gauge the public's view on the proposed Electronic Road Pricing Pilot Scheme in Central and its Adjacent areas (the "Scheme"). In its Submission to the government, the PCPD expressed general support for the proposal and recommended that the government should adopt a Privacy-by-design approach in harnessing any privacy risks from development to implementation of the Scheme.

Charging mechanism

The PCPD considered that effectiveness, fairness and privacy-friendliness were the relevant factors in considering which charging mechanism, i.e. area-based or cordon-based approach, should be preferred. From the data privacy perspective, the PCPD noted, in particular, that the use of satellite technology in tracking vehicles inside the charging area might enable the aggregation, matching and further processing of vehicle owners' personal data in the public domain (i.e., the Register of Vehicles), thus creating travel profiles of individuals and making surveillance possible. The PCPD therefore urged the government to adopt the less privacy-intrusive options when designing the Scheme.

Technology for the Scheme

Two commonly used technologies for the Scheme, the Automatic Number Plate Recognition and the Dedicated Short-range Radio Communications, were discussed in the consultation document. The Automatic Number Plate Recognition technology would capture the licence number plate of all vehicles entering or leaving the charging area, and the vehicle registration marks, when combined with other identifiable information of the individual owners obtained from the Register of Vehicles, might enable the identities of the vehicle owners to be ascertained and their travel profiles established. The PCPD was concerned that the building up of travel profile would render an individual more vulnerable to privacy risks and that the Automatic Number Plate Recognition technology might be used as policing tools by law enforcement agencies. On the other hand, the Dedicated Short-range Radio Communications technology would require the installation of an In-vehicle unit to enable instantaneous payment and a vehicle would be captured only in case of unsuccessful payment. It appeared to the PCPD that personal data privacy might be better protected if payment under the Scheme was to be made via a pre-paid anonymous card using Dedicated Short-range Radio Communications technology. The Government was invited to provide more operational details of this technology for further assessment of privacy risks.

Compliance with the Ordinance

The PCPD submitted that irrespective of the kinds of technology or charging mechanism to be adopted in the Scheme, the operator

人資料方面須遵從條例的規定，尤其是收集的個人資料就該計劃的目的而言，應該屬足夠、必需但不超乎適度。營運者在收集個人資料之時或之前，亦應確保有關個人獲告知收集目的及其個人資料可能被轉移予甚麼類別的人士。該計劃所收集的個人資料不應被保留超過所需的時間。除非已取得有關個人的訂明同意或條例下的豁免條文適用，否則個人資料的使用必須符合原本的收集目的或直接有關的目的。政府必須採取合理地切實可行的步驟，保障該計劃下備存的個人資料。公署亦提醒政府在外判個人資料的處理予承辦商或轉移資料至香港境外時，留意資料使用者在條例下的責任。

未來路向

政府同意進行公署建議的私隱影響評估，以識別該計劃潛在的私隱風險，並在該計劃隨後的可行性研究中處理有關問題。



本年度私隱專員亦就以下公眾諮詢提交意見書：

of the Scheme must comply with the Ordinance in the collection and subsequent handling of personal data. In particular, personal data collected should be adequate, necessary but not excessive for the purpose of the Scheme. The operator should also ensure that, on or before collecting personal data, the individual would be duly notified of the purposes of collection and the classes of persons to whom his personal data might be transferred. Personal data collected under the Scheme should not be kept for a period longer than would be necessary. Use of the personal data must be consistent with the original collection purpose or directly related purpose unless with the prescribed consent of the individual concerned or any exemption provision under the Ordinance would apply. Reasonably practicable steps must be taken to safeguard the personal data maintained under the Scheme. The Administration was also reminded of data user's obligations under the Ordinance when outsourcing the processing of personal data to a contractor or transferring the data outside Hong Kong.

Way forward

The government agreed to conduct a privacy impact assessment as suggested by the PCPD to identify potential privacy risks involved in the Scheme and would address the issues in the subsequent feasibility study of the Scheme.

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

徵詢意見的部門 Consulting Organisation	諮詢文件 Consultation Paper
律政司 Department of Justice	在香港制定道歉法例的諮詢 Consultation on Enactment of Apology Legislation in Hong Kong
財經事務及庫務局 Financial Services and the Treasury Bureau	香港就稅務事宜自動交換金融帳戶資料的諮詢 Consultation on Automatic Exchange of Financial Account Information in Tax Matters in Hong Kong

(公署對以上公眾諮詢所提交的意見書可於公署網站詳閱或下載。)
(The above submissions to Public Consultations by the PCPD can be read or downloaded from the PCPD's website.)

公署對建議中的法例及行政措施所作的評論

《2015年證券及期貨(修訂)條例草案》——容許證券及期貨事務監察委員會向香港以外地方的規管者提供監管協助

草案旨在為下述事宜加入規定——(1) 證券及期貨事務監察委員會(「證監會」)在與非執法有關的事宜上，為應海外規管者所提出的要求提供協助而從香港的受規管機構(亦受香港以外地方的規管者規管，或其相關公司受香港以外地方的規管者規管)收集資料；及(2) 證監會轉移這些資料予海外的規管者。

私隱專員為了解證監會提供有關協助的公眾利益，請政府闡釋海外規管者履行其監管職能如何與證監會對香港的受規管機構履行職能有關。

私隱專員亦提醒政府，證監會在行使草案擬議的權力收集資料時，必須遵守條例附表1的保障資料第1(1)原則(規管個人資料的收集)。鑑於有關建議，私隱專員亦建議受規管機構檢討及修訂(如有需要)其收集個人資料聲明及私隱政策，以及就擬議的資料使用及轉移向個人提供有效的通知(根據條例附表1的保障資料第1(3)及5原則)。

有關收取資料機構或規管機構根據草案就所要求的資料作出的書面承諾，私隱專員促請政府加強對所要求的資料的保障範圍，尤其是限制資料不得用於任何法律程序、保密規定或不得披露予任何人的規定，以及在達致使用目的後即交還或刪除資料。

最後，私隱專員建議證監會在決定是否同意海外規管者使用資料於海外罪行時，去小心考慮條例下的「罪行」的意思。私隱專員解釋，條例第58(2)條關於為罪行的防止或偵測而使用個人資料的豁免只限於條例第58(6)條下的「罪行」的定義，即(i)香港法律所訂的罪行或(ii)(已就刑事事宜與香港

COMMENTS MADE ON PROPOSED LEGISLATION AND ADMINISTRATIVE MEASURES

Securities and Futures (Amendment) Bill 2015 – Allowing the Securities and Futures Commission to provide Supervisory Assistance to Regulators outside Hong Kong

The Bill sought to introduce – (1) the collection of information by the Securities and Futures Commission (“SFC”) from the regulated entities in Hong Kong (which were also regulated, or with related corporation regulated by overseas regulator) for the purpose of assisting overseas regulators on non-enforcement-related matters upon request; and (2) the transfer of such information by the SFC to overseas regulators.

To help understand the public interest for the provision of such assistance by SFC, the Commissioner asked the government to elaborate on how the overseas regulators’ performance of their supervisory function related to the functions of the SFC in relation to the regulated entities in Hong Kong.

The Commissioner also reminded the government that the principle as enunciated under DPP1(1) in Schedule 1 of the Ordinance (governing the collection of personal data) must be observed by the SFC when exercising the power in collecting information as proposed under the Bill. In view of the proposal, the regulated entities were advised to review and revise (if necessary) their Personal Information Collection Statement and Privacy Policy as well as to give effective notice to individuals for the proposed use and transfer of information (in accordance with DPP1(3) and DPP5 in Schedule 1 of the Ordinance).

With regard to the written undertaking to be given by the recipient authority or regulatory organisation in relation to the requested information under the Bill, the Commissioner urged the government to strengthen the scope of protection for the requested information particularly with respect to the restriction on the use of the information in any proceedings, the requirement on confidentiality or non-disclosure to any person and the return or erasure of the information once the purpose for using the same has been fulfilled.

Lastly, the Commissioner advised the SFC to give due regard to the meaning of “crime” under the Ordinance when determining whether or not to grant any consent to overseas regulators for the secondary use of the information for overseas offence(s). The Commissioner explained that the exemption under section 58(2) of the Ordinance for the use of personal data for the purpose of crime prevention or detection was restricted to the defined meaning of “crime” under

簽訂相互法律協助協議或安排的) 香港以外地方的法律所訂的罪行。

政府大致上接納私隱專員就收集及轉移個人資料予海外規管者所提出的意見，並對草案作相應修訂。關於收取資料機構提供的書面承諾，政府表示所交換的資料中只有少部分涉及個人資料，故無需規定收取資料機構承諾適時交還或刪除從證監會取得的資料。私隱專員回覆時重申其觀點，把有關規定納入書面承諾可確保被轉移至香港以外地方的個人資料獲得相當於在條例下所提供的保障。

草案於2015年6月12日提交立法會，並於2015年11月5日獲通過。

《2016年稅務(修訂)條例草案》——香港就稅務事宜自動交換金融帳戶資料的擬議法律框架

該草案旨在就稅務事宜自動交換金融帳戶資料(「自動交換資料」)為香港引入新標準。自動交換資料是經濟合作與發展組織頒佈的新標準，政府已表示透過本地立法，支持落實新標準。

自動交換資料的擬議法律框架是建基於早前依據《稅務條例》(第112章)第49(1A)條訂立的交換金融帳戶資料機制，當中包含全面性避免雙重課稅協定及稅務資料交換協定。實際上，該安排是以雙邊基礎合作模式，由海外稅務機關基於懷疑有逃稅情況而提出交換資料的要求。

私隱專員原則上支持依從現行的國際標準所擬議的法律框架。不過，由於須申報的帳戶資料包括廣泛的「個人資料」*，因此擬議的法律框架必須符合條例的規定，這點至為重要。在自動交換資料的公眾利益與非香港稅

* 須申報的帳戶資料包括每名須予申報人士的姓名、地址、所屬居住地、納稅人識別號碼、出生日期、帳號、帳戶結餘或數額，及帳戶的其他相關財務資料等。

section 58(6) of the Ordinance which refers to (i) any offence under the laws of Hong Kong or (ii) an offence under the laws of a place outside Hong Kong with which Hong Kong has entered into mutual legal assistance agreement or arrangement in criminal matters.

The government generally adopted the Commissioner’s comments in relation to the collection and transfer of personal data to overseas regulators and made adjustments to the Bill accordingly. With respect to the written undertaking to be provided by the recipient authority, the government stated that only a small portion of information exchanged would involve personal data and it would be unnecessary to require the recipient authority to undertake to timely return or erase the information received from SFC. In response, the Commissioner reiterated his view that inclusion of the requirements in the written undertaking would ensure that any personal data to be transferred outside Hong Kong would be afforded a level of protection comparable to that under the Ordinance.

The Securities and Futures (Amendment) Bill 2015 was introduced to the Legislative Council on 12 June 2015 and was passed on 5 November 2015.

Inland Revenue (Amendment) Bill 2016 - Proposed Legislative Framework for Automatic Exchange of Financial Account Information in Tax Matters in Hong Kong

The Bill sought to introduce into Hong Kong the new standard of Automatic Exchange of Financial Account Information in Tax Matters (“AEOI”). AEOI was a new standard promulgated by the Organisation for Economic Cooperation and Development whereby the government had already indicated its support for implementing the new standard by way of local legislation.

The proposed legislative framework for AEOI was premised upon the then regime for exchange of financial account information consisting of the comprehensive avoidance of double taxation agreements and tax information exchange agreement made pursuant to section 49(1A) of the Inland Revenue Ordinance (Cap 112). In practice, the arrangement operated on a bilateral basis upon request by overseas tax authorities based primarily on suspicion of tax evasion.

In principle, the Commissioner supported the proposed legislative framework which aimed at complying with the prevalent international standard. Nevertheless, given that the scope of reportable account information comprises a wide variety of information concerning “personal data”*, it would be of paramount

* The scope of reportable account information includes the name, address, jurisdiction(s) of residence, Tax Identification Number, date of birth of each reportable person, the account number, the account balance or value, and other relevant financial information of the account, etc.

務居民帳戶持有人的私隱利益之間，必須取得適當的平衡。

事實上，私隱專員曾於2015年6月就實施自動交換資料的公眾諮詢提供意見。另外，私隱專員曾與財經事務及庫務局和稅務局的代表開會，促進了雙方的意見交流。

2015年12月，私隱專員收到該草案的擬議法律框架的主要條文。該擬議法律框架已回應私隱專員之前提出的部分關注，包括(i)就金融機構及稅務局收集相關個人資料訂立法定基礎；及(ii)指明相關個人資料的保留期限。私隱專員已去信政府重申他對下述兩項未獲回應的議題的關注：

(i) 收集超乎適度資料的風險仍然存在，因為金融機構獲准採取「寬鬆方式」(即辨識及保留所有非香港稅務居民帳戶持有人的相關資料，不論某特定的稅務管轄區在關鍵時間是否表明須申報)。私隱專員強調，金融機構就居住地屬須申報地區的人士而收集個人資料以履行其匯報責任，可能不同於為履行盡職審查而收集個人資料以辨識須予申報的帳戶。

(ii) 原本就稅務用途交換所得的資料其後可能被用於「非稅務相關的用途」。雖然政府表示「非稅務相關的用途」的範圍只限於販毒、有組織及嚴重罪行和恐怖活動，但私隱專員重申，政府須採取步驟，在日後與潛在的自動交換資料伙伴簽訂雙邊協定時，限制「非稅務相關的用途」的應用範圍。

該草案已於2016年1月8日提交立法會，法案委員會仍在審議中。

importance that the proposed legislative framework should be consistent with the requirements under the Ordinance. A proper balance must be struck between the public interest for the annual exchange of financial account information and the privacy interest of the non-Hong Kong tax resident-account holders concerned.

In fact, the Commissioner had previously rendered his comments in response to the public consultation on the implementation of AEOL in June 2015. Separately, the Commissioner had had a meeting with the representatives of the Financial Services and the Treasury Bureau and the Inland Revenue Department to facilitate exchange of ideas.

In December 2015, the Commissioner was provided with the key provisions concerning the proposed legislative framework of the Bill. The proposed legislative framework for the Bill addressed some of his prior concerns which included (i) to introduce the statutory basis for collection of the relevant personal data by the financial institutions and the Inland Revenue Department; and (ii) to specify the retention period for the relevant personal data. The Commissioner subsequently wrote to the government to reiterate his concerns regarding the following two outstanding issues:

(i) The risk of excessive collection still remained because the financial institutions were allowed to adopt a “wider approach” (i.e. to identify and keep relevant information from all their non-Hong Kong tax resident-account holders irrespective of whether a particular jurisdiction was declared reportable or not at the material time). The Commissioner stressed that the purpose of collecting personal data for the discharge of a financial institution’s reporting obligation concerning an individual with residence falling under the reportable jurisdiction might be different from the purpose of collecting personal data to fulfil its due diligence obligation to identify reporting accounts.

(ii) The use of the information originally exchanged for tax purpose might be subsequently used for “non-tax related purposes”. Although the government explained that the scope of “non-tax related purposes” would be limited to drug trafficking, organised and serious crimes and terrorists acts, the Commissioner reiterated the importance for the government to take steps in restricting the scope of application of “non-tax related purposes” in the bilateral arrangements to be entered into with prospective AEOL partners.

The Bill was introduced to the Legislative Council on 8 January 2016, followed by the examination of 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 provided comments on the following proposed legislation and administrative measures :

機構 Organisation	建議的法例 / 行政措施 Proposed legislation / administrative measures
商務及經濟發展局 Commerce and Economic Development Bureau	《2015年專利(修訂)條例草案》 Patents (Amendment) Bill 2015
政制及內地事務局 Constitutional and Mainland Affairs Bureau	《2015年選舉法例(雜項修訂)(第2號)條例草案》 Electoral Legislation (Miscellaneous Amendments) (No.2) Bill 2015
選舉管理委員會 Electoral Affairs Commission	2016年選舉委員會界別分組選舉活動建議指引 Proposed Guidelines on Election-Related Activities in respect of the 2016 Election Committee Subsector Election 行政長官選舉活動建議指引 Proposed Guidelines on Election-Related Activities in respect of the Chief Executive Election 區議會選舉活動建議指引 Proposed Guidelines on Election-Related Activities in respect of the District Council Election 立法會選舉活動建議指引 Proposed Guidelines on Election-Related Activities in respect of the Legislative Council Election
財經事務及庫務局 Financial Services and the Treasury Bureau	《2015年破產(修訂)條例草案》 Bankruptcy (Amendment) Bill 2015 《2015年公司(清盤及雜項條文)(修訂)條例草案》 Companies (Winding Up and Miscellaneous Provisions) (Amendment) Bill 2015
食物及衛生局 Food and Health Bureau	私營醫療機構規管條例草案——法律草擬指示 Regulation of Private Healthcare Facilities Bill – Drafting Instructions 《私營骨灰安置所條例草案》委員會審議階段修正建議 Proposed Committee Stage Amendments to the Private Columbaria Bill
司法機構政務處 Judiciary Administration	在高等法院的紀律處分程序不揭露律師名字的法律修改建議 Proposed Legislative Amendments relating to Non-Disclosure of Solicitors’ Names in Disciplinary Proceedings in the High Court
海事處 Marine Department	規定本地大型載客船隻安裝船舶自動識別系統的立法建議 Legislative Proposal for Requirement of Installation of Automatic Identification System on Large Local Passenger Vessels

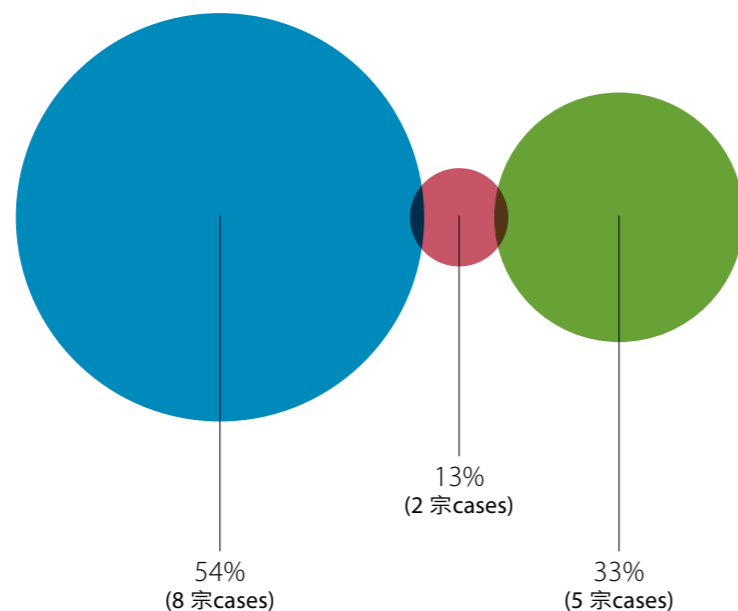
法律協助計劃

法律協助計劃於2013年4月1日開始。根據該計劃，公署可向因資料使用者違反條例規定而蒙受損害，並有意提起法律程序以尋求補償的個人，提供協助。本年度內，公署接獲15宗新的法律協助申請，其中93%（即14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) 使用或披露個人資料；(ii) 查閱及改正資料要求；及(iii) 個人資料的保安。

圖 Figure 4.4 違規指控的性質
Nature of alleged contraventions

- 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
- 保障資料第6原則 — 查閱及改正資料要求
DPP6 – data access and correction requests



本年度內公署處理了16宗申請（包括去年未完成的一宗）。在這些申請中，已完成的申請有14宗，其餘兩宗申請在年結時仍在考慮中。

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 under the Ordinance and intends to institute proceedings to seek compensation from the data user at fault. In the report year, the PCPD received 15 legal assistance applications, of which 93% (i.e.14 cases) were preceded by a complaint lodged with the PCPD.

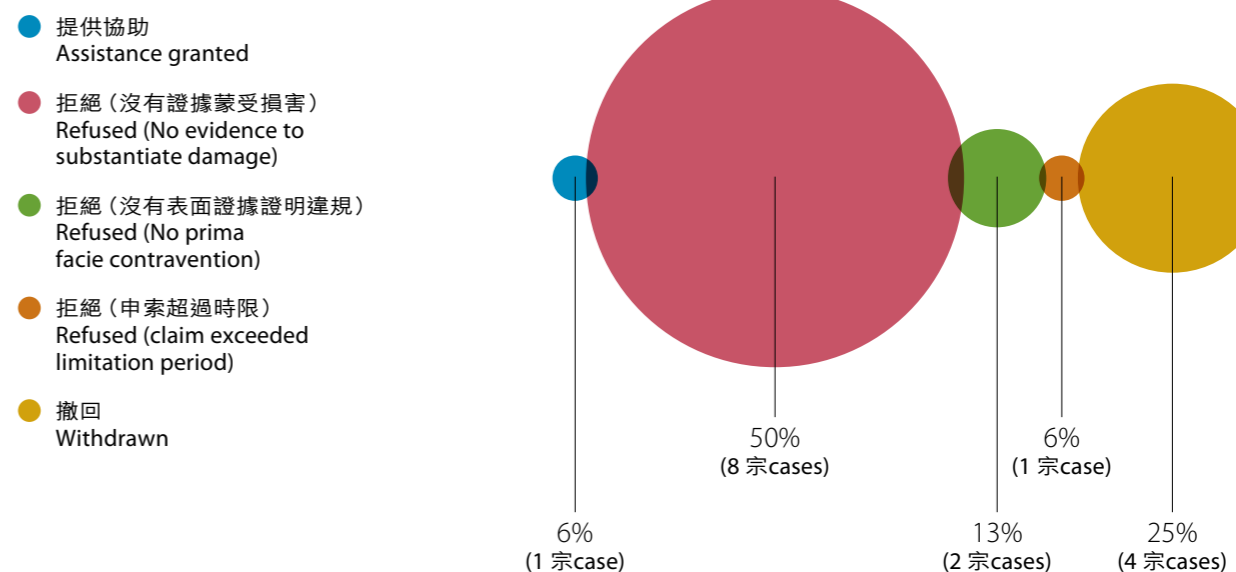
These applications involved alleged contraventions of the Ordinance in respect of (i) the use or disclosure of personal data; (ii) data access and correction requests; and (iii) security of personal data.

During the report year, the PCPD handled 16 applications (including one carried forward from last year). Of these applications, 14 applications were completed and two applications were still under consideration as at the end of the report period.

在已完成的14宗個案中，一宗獲給予法律協助、四宗由申請人撤回、九宗被拒。圖4.5顯示法律協助申請的結果。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。

Of the 14 cases completed, one was granted legal assistance, four were withdrawn by the applicants and nine were refused. Figure 4.5 below shows the outcome of legal assistance applications. The main reasons for refusing applications included the absence of prima facie evidence of contravention of the Ordinance and the failure to provide evidence to substantiate any damage suffered.

圖 Figure 4.5 法律協助申請的結果
Outcome of legal assistance applications



* 申請被拒的原因可能多於一個。因此，上圖的個案總數並不等於申請總數。
There may be more than one ground of refusal for an application. Hence, the total numerical number of cases in the above table does not equal to the total number of applications.

公署在本年度內接獲一宗有關覆檢拒絕申請的要求，公署仍在考慮中。
One request for review of refusal was received during the year which was still under consideration.

去年獲批法律協助的一宗個案已展開法律程序。本年度內已獲批法律協助的個案尚在初步階段，法律程序仍未展開。
Court proceedings has been commenced for one legal assistance case granted last year. The remaining legal assistance case granted during the report year is at the preliminary stage and legal proceedings has not yet been commenced.