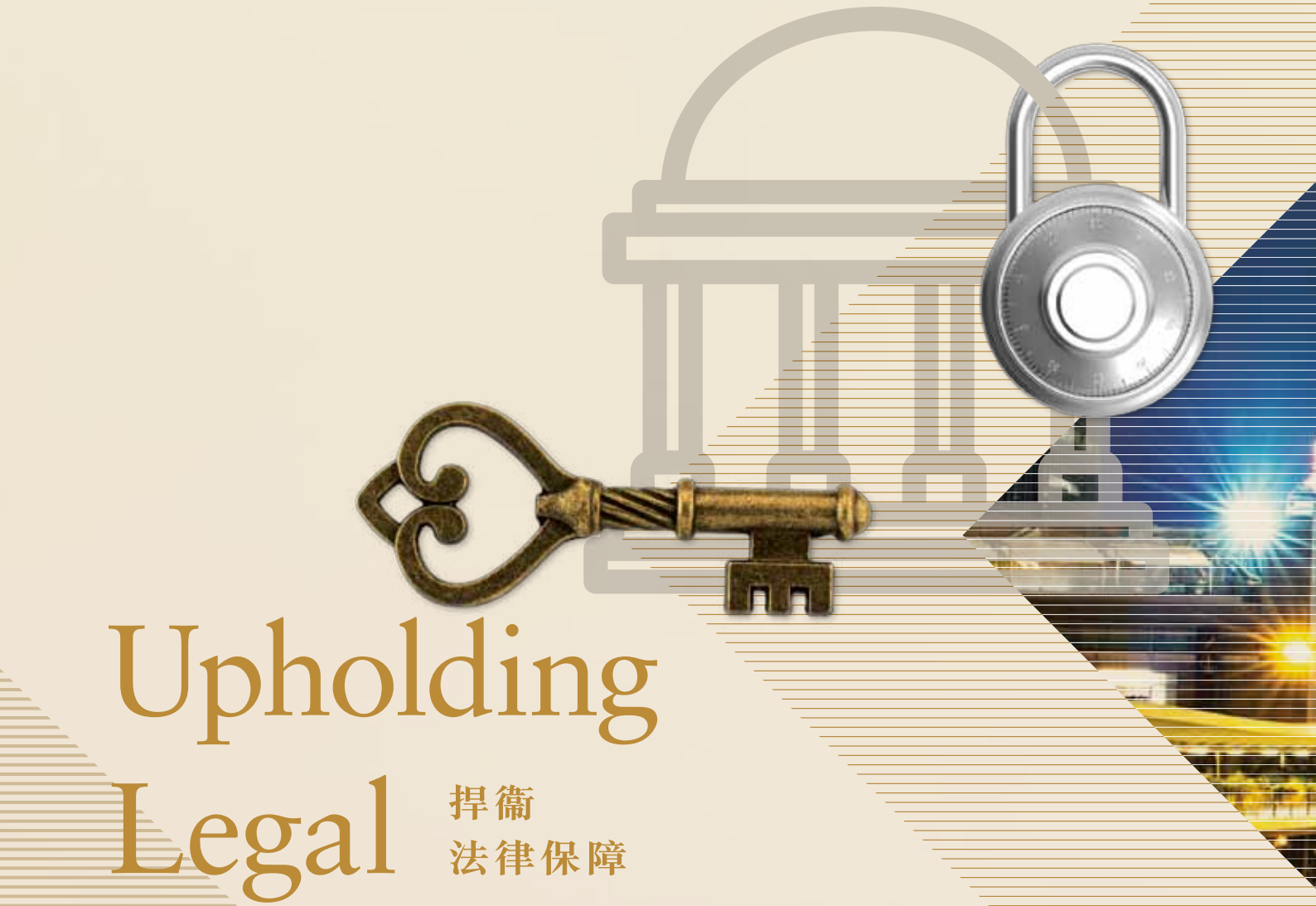


Upholding Legal Protection

捍衞法律保障

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。

Fairness and Equity

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 at hearings before the courts or the Administrative Appeals Board.

《香港個人資料（私隱）法例的符規實務指南》

公署與香港城市大學出版社聯合出版英文書籍“Personal Data（Privacy）Law in Hong Kong — A Practical Guide on Compliance”（《香港個人資料（私隱）法例的符規實務指南》），作為公署成立二十周年的誌慶活動之一。這本實務指南於2016年7月的香港書展中正式發售，內容闡述香港個人資料私隱保障的概念、法律及實務框架，為所有持份者及對香港個人資料私隱形勢有興趣的人士提供符規方面的實務指引。這本書是在公署另一本書“Data Protection Principles in the Personal Data（Privacy）Ordinance — from the Privacy Commissioner's perspective”（2nd Edition, 2010）（《香港個人資料（私隱）條例中的保障資料原則 — 私隱專員的觀點》（2010年第二版））的基礎上加以擴充，加入了2012年的立法修訂、最近的法庭案件、行政上訴委員會的裁決，以及公署所發表的三份實務守則。

公署與香港城市大學出版社為這本實務指南舉辦了不同的推廣活動，包括前奏活動及攝製在書展和其他平台播放的宣傳短片。私隱專員亦於2016年9月出席一個名為“Managing your Personal Data — Now and in the Future”（「管理你的個人資料 — 現在及將來」）的書籍分享會。

PUBLICATION OF “PERSONAL DATA (PRIVACY) LAW IN HONG KONG – A PRACTICAL GUIDE ON COMPLIANCE”

As one of the activities to mark its 20th anniversary of establishment, the PCPD jointly published with the City University of Hong Kong Press an English Guide Book entitled “Personal Data (Privacy) Law in Hong Kong – A Practical Guide on Compliance”. This Guide Book, which was officially released at the Hong Kong Book Fair in July 2016, explains the conceptual, legal, and practical frameworks of the personal data privacy protection in Hong Kong. It offers a practical guide on compliance for all stakeholders, as well as those who are interested in the personal data privacy landscape in Hong Kong. Expanding on the PCPD's handbook entitled “Data Protection Principles in the Personal Data (Privacy) Ordinance – from the Privacy Commissioner's perspective” (2nd Edition, 2010), this Guide Book has incorporated the 2012 legislative amendments, recent court cases, the Administrative Appeals Board decisions, and the three Codes of Practice issued by the PCPD.

The PCPD has collaborated with the City University of Hong Kong Press on various promotional activities of this Guide Book, including the pre-launch campaign and shooting of a short promotional film for broadcasting at the Book Fair and other platforms. The Commissioner also attended a Book Talk on the topic of “Managing your Personal Data – Now and in the Future” in September 2016.

嘉許 Commendations

我很感謝貴署在出版這本書所作的努力，它對香港個人資料私隱的形勢作出有用及全面的評論。這本書肯定對有關從業員及持份者的工作有幫助，並加深公眾對這方面的了解。它亦是有興趣研究這個法律範疇的人士不可或缺的書籍。

I would like to express my gratitude to you for your efforts in publishing the book which provides a useful comprehensive review of the personal data privacy landscape in Hong Kong. I am sure that the book will assist the work of the practitioners and stakeholders, as well as enhance the public's understanding on the matter. It will also be an indispensable addition to the bookshelf of everyone interested in this area of the law.

律政司司長袁國強資深大律師
（2016年8月22日）
Mr Rimsky YUEN, SC, Secretary for Justice
(22 August 2016)

嘉許 Commendations

我很高興這本實用的參考書（輔以未必有機會被報道的真實案例）終於出版。錯綜複雜的議題，以簡明的方式闡述，讀者都希望保障生活中如此重要部分的體制獲得遵從。

I am most pleased that this handy and useful reference, peppered with live cases which are not otherwise reported, has finally gone to print. It is also much of a delight to find that the intricate issues are dealt with in so compendious a manner for those who wish to see that the regime protecting such an important part of our lives is complied with.

律政司法律政策專員黃惠沖資深大律師
（2016年8月18日）
Mr Wesley W.C. WONG, SC, Solicitor General, Department of Justice
(18 August 2016)

嘉許 Commendations

我在這個星期就所發生的幾個議題參考過這本書，它確是非常有價值的參考資源。

I have already consulted the book on a few topics that have arisen this week and it can assure you it is a very valuable resource.

Messrs Hogan Lovells合夥人Mr Mark PARSONS
（2016年8月19日）
Mr Mark PARSONS, Partner, Messrs Hogan Lovells
(19 August 2016)

跨境資料轉移

條例於1995年制定時，參考了經濟合作及發展組織私隱指引及1995年歐盟指令在保障個人資料方面的規定。資訊自由流通以促進商業發展，是促使制定條例的其中一項潛在因素。

隨著歐盟採用《通用數據保護條例》(將於2018年5月生效)，歐盟已宣佈於2017年積極與亞洲主要貿易夥伴制定框架，以判斷某司法區的資料保障法律體制是否對個人資料私隱提供足夠的保障。1995年指令及新的《通用數據保護條例》均規定需要確保轉移至歐盟成員國以外地方的個人資料獲得足夠的保障。類似規定亦常見於很多海外的資料保障機制。

條例第33條嚴格地及全面地規管轉移資料至香港以外地方的行為。它明確禁止除在指明情況外將個人資料轉移至「香港以外地方」。不過，條例自1995年制定後，第33條尚未實施。

為鼓勵政府重新聚焦於條例第33條，公署已進行必要的準備工作，包括制訂「白名單」，羅列私隱標準與本港相若的地區，及於2014年出版了《保障個人資料：跨境資料轉移指引》，當中附有一套資料轉移的建議範本條文，協助資料使用者擬備資料轉移協議。「白名單」報告已提交政制及內地事務局考慮。

其後，政府聘請顧問就實施條例第33條進行業務影響評估。在年報期內，公署曾就條例有關規定的釋義、應用及循規事宜向政府的顧問提供意見。

CROSS-BORDER DATA TRANSFER

When the Ordinance was enacted in 1995, reference was made to the Organisation for Economic Co-operation and Development (OECD) Privacy Guidelines and the European Union Directive 1995 on protection of personal data. Free flow of information to facilitate trade was one of the underlying factors triggering the enactment of the Ordinance.

Following its adoption of the General Data Protection Regulations (to be effective in May 2018), the European Union has announced that it would actively engage with key trading partners in Asia in 2017 to establish frameworks to determine whether the data protection legal regime of a particular jurisdiction offers adequate protection to personal data privacy. Ensuring adequate protection for personal data transferred outside European Union member states is required under both the Directive 1995 and the new General Data Protection Regulations. Similar requirements are commonly found in many overseas data protection regimes.

Section 33 of the Ordinance stringently and comprehensively regulates the transfer of data outside Hong Kong. It expressly prohibits all transfers of personal data "to a place outside Hong Kong" except in specified circumstances. However, section 33 has not been brought into force since its enactment in 1995.

To encourage the Government to have a renewed focus on section 33 of the Ordinance, the PCPD has undertaken the necessary preparatory work, including the preparation of a "White List" of jurisdictions with privacy standards comparable to that of Hong Kong and published in 2014 a "Guidance on Personal Data Protection in Cross-border Data Transfer" with a set of Recommended Model Clauses for data users to adopt in their data transfer agreement. The White List report was provided to the Constitutional and Mainland Affairs Bureau for consideration.

Subsequently, the Government has engaged a consultant to conduct a business impact assessment for the implementation of section 33 of the Ordinance. During the report period, the PCPD has rendered comments to the Government's consultant concerning the interpretation, application, and compliance issues of the relevant legal requirements under the Ordinance.

上訴法庭的裁決

吳倩媚 對 香港個人資料私隱專員公署（CACV 97/2016）（原本案件編號：HCAL 36/2016）

沒有合理解釋為何在延遲近五年後才提出司法覆核的許可申請 —— 公署決定拒絕調查投訴時條例第39(3)條開始施行 —— 45日法定時限應由最後收到上訴人提交的證據的日期開始計算 —— 無法律基礎顯示公署的決定是不合法或不合理 —— 上訴人提出的司法覆核申請沒有合理的成功機會

主審法官： 林文瀚副庭長
朱芬齡法官
彭偉昌法官

判案理由書日期： 2016年10月26日

案情

2010年10月，上訴人向公署作出投訴，對多間具規模的公司及其在港職員提出十項指稱，指他們不公平地收集其個人資料（包括銀行戶口資料）及未經她的同意而向不同人士及／或機構披露那些資料。上訴人繼續於2011年1月及5月分別以兩封信向公署提供進一步資料，但另一方面以書面承認她沒有實質證據支持其指稱。2011年5月24日，公署通知上訴人，公署決定不對其投訴展開調查，原因是缺乏表面證據證明有違規情況。上訴人沒有依據《行政上訴委員會條例》以訂明表格提出上訴，只於2011年6月18日向行政上訴委員會發出信件，但沒有留下任何通訊地址或聯絡電話號碼。

2016年3月（公署作出決定後近五年）上訴人向原訟法庭申請許可，對公署不調查其投訴的決定展開司法覆核程序（根據HCAL 36/2016）。原訟法庭在考慮該申請的成功機會後，於2016年4月駁回該申請。

其後，上訴人向上訴法庭提出上訴。

COURT OF APPEAL DECISION

吳倩媚 v Privacy Commissioner for Personal Data, Hong Kong (CACV 97 of 2016)(on appeal from HCAL 36 of 2016)

No reasonable explanation for the delay of almost 5 years in making the application for leave for judicial review – section 39(3) of the Ordinance operates where the PCPD decides to refuse to investigate a complaint – the 45-day statutory time limit should start to run from the date of last receipt of the evidence in support submitted by the Appellant – there was a lack of legal basis to show the PCPD's decision was unlawful or unreasonable – No reasonable prospect of success of the Appellant's intended judicial review application

Coram: The Honourable Mr Justice Lam, VP
The Honourable Ms Justice Chu, JA
The Honourable Mr Justice Pang, JA

Date of Judgment: 26 October 2016

Facts of the case

In October 2010, the Appellant lodged a complaint to the PCPD with 10 allegations against certain sizable companies and their staff in Hong Kong for unfair collection of her personal data (including her bank accounts information) and disclosure of the same without her consent to various people and/or organisations. The Appellant continued to supply further information to the PCPD (in two more letters in January and May 2011 respectively) whilst admitted in writing that she had no concrete evidence in support of her allegations. On 24 May 2011, the PCPD informed the Appellant of the decision not to carry out an investigation of her complaint because there was a lack of evidence to substantiate a prima facie case of contravention. Instead of lodging an appeal in a prescribed form pursuant to the Administrative Appeals Board Ordinance, the Appellant merely sent a letter dated 18 June 2011 to the Administrative Appeals Board without leaving any correspondence address or contact number.

In March 2016, almost five years after the PCPD's decision, the Appellant applied to the Court of First Instance for leave to commence judicial review proceedings against the PCPD's decision not to investigate her complaint (under HCAL No.36 of 2016). After considering the merits of the application, the Court of First Instance dismissed the application in April 2016.

The Appellant then appealed to the Court of Appeal.

上訴庭的裁決理由

上訴法庭認為上訴人沒有提供合理的理由，解釋為何延遲近五年才提出申請。上訴人向不同政府部門及政策局發出投訴信，不能被視為「上訴」。上訴法庭尤其譴責上訴人指行政上訴委員會應主動聯絡她這個論點是無理取鬧。上訴法庭認為上訴人有不當的延誤。

此外，上訴法庭認為公署沒有不遵從條例第39(3)條下的45日法定時限。雖然上訴人是於2010年10月向公署作出投訴，但直至2011年5月11日公署不斷收到上訴人的進一步證據。直至當時（而不是較早），公署才能決定拒絕對她的投訴進行調查或終止調查。公署在考慮所有資料後，於2011年5月24日作出決定。上訴法庭認為45日法定時限應由最後收到上訴人提交的證據的日期開始計算。因此，公署已於45日法定時限內把決定告知上訴人。

此外，上訴法庭認為上訴人提出的司法覆核申請沒有合理的成功機會。上訴人沒有提供任何證據顯示公署的決定是不合法或不合理。

上訴法庭駁回上訴，並命令上訴人繳付公署的訟費。

上訴人親身應訊（缺席）

凌依楠大律師
代表答辯人（香港個人資料私隱專員）

Reasons for the Court of Appeal's Decision

The Court of Appeal considered that the Appellant had not provided any reasonable explanation for the delay of almost five years in making the application. The Appellant's sending of complaint letters to various government departments and bureaux was not to be construed as lodging any "appeal". In particular, the Court of Appeal condemned the Appellant's allegation that the Administrative Appeals Board should have taken the initiative to contact her and considered such argument as vexatious. The Court of Appeal found that there had been undue delay on the part of the Appellant.

Furthermore, the Court of Appeal held that the PCPD had not failed to comply with the 45-day statutory time limit under section 39(3) of the Ordinance. Although the complaint was made by the Appellant to the PCPD in October 2010, the PCPD continued to receive further evidence from the Appellant until 11 May 2011. Until then, but not earlier, the PCPD was in a position to decide to refuse to carry out or terminate an investigation of her complaint. The PCPD reached the decision on 24 May 2011 after considering all the information. The Court of Appeal was of the view that the 45-day statutory time limit should start to run from the date of last receipt of the evidence submitted by the Appellant in support of her complaint. Therefore, the PCPD had informed the Appellant of the decision within the 45-day statutory time limit.

Besides, the Court of Appeal considered that the Appellant's intended judicial review application had no reasonable prospect of success. The Appellant had failed to provide any evidence to show that the PCPD's decision was unlawful or unreasonable.

In dismissing the appeal, the Court of Appeal ordered the Appellant to pay the costs of the PCPD.

The Appellant acting in person (absent)

Ms Ebony Ling,
Barrister-at-law
for the Respondent (Privacy Commissioner for Personal Data, Hong Kong)

高等法院裁判法院上訴案件（2015年第624號）

香港特別行政區（答辯人）訴 香港寬頻網絡有限公司（上訴人）

條例第35G條直接促銷的罪行 —— 嚴格法律責任 —— 控方無須證明被控人有犯罪意圖 —— 第35G(5)條是辯方唯一的免責辯護 ——「要約提供」包括提出會提供的意思 —— 留言內容超越了提醒現有客戶合約將會期滿 —— 上訴人未能證明已採取所有合理措施和作出一切應作的努力以避免不依從拒絕服務要求

主審法官： 高等法院原訟法庭 黃崇厚法官

判案日期： 2017年1月26日

上訴人被控違反條例第35G條，即資料當事人要求資料使用者停止將其個人資料用於直接促銷，而資料使用者並無依從有關要求。上訴人經審訊後被裁定罪名成立，判處罰款30,000元。上訴人不服定罪，提出上訴。

案情

上訴人為互聯網服務供應商，一名上訴人的現有客戶（「該客戶」）於2011年12月開始使用上訴人的服務，合約期為24個月。該客戶於2013年4月以電郵方式，要求上訴人停止在直接促銷中使用他的個人資料。上訴人向該客戶的電郵地址發出回覆，確認收到他的退出申請。

同年5月17日，上訴人的一名電話推廣職員（「該職員」）致電該客戶的手提電話，該客戶未有接聽。該職員於是留下留言訊息，表示該客戶合約即將完結，而6月份開始會調整續約價錢，但若該客戶於5月份續新約有內部優惠，不會受到加價的影響，該職員並留下她的姓氏和電話號碼，以便該客戶回覆她的口訊。

上訴人指該職員負責現有／舊客的售後服務及合約提示，提醒客戶續約是重要的服務，與「直接促銷」沒有關係。上訴人向員工提供訓練和部門守則，要求員工向客戶提供準確資訊，亦向員工提供訓練講稿，針對不同意使用其個人資料作直接促銷的客戶續約之用，但該職員的留言內容偏離講稿，加入了

HIGH COURT MAGISTRACY APPEAL (HCMA 624/2015)

HKSAR (Respondent) v Hong Kong Broadband Network Limited (Appellant)

Direct marketing offence under section 35G – strict liability – the prosecution needs not prove mens rea – the only available defence is found in section 35G(5) – "offering" includes the meaning of offering to provide – content of voice message exceeded the realm of reminding existing customer that his contract would soon expire – the Appellant failed to prove that it had taken all reasonable precautions and exercised all due diligence to avoid non-compliance with the opt-out request

Coram: The Honourable Mr Justice Wong, Judge of the Court of First Instance of the High Court

Date of Judgment: 26 January 2017

The Appellant was charged with the offence under section 35G of the Ordinance for failing to comply with a data subject's request to cease using his personal data in direct marketing. The Appellant was convicted after trial and fined $30,000. The Appellant appealed against the conviction.

Facts of the Case

The Appellant was an internet service provider. One of the Appellant's existing customers (the Customer) had subscribed for the Appellant's service in December 2011 for a term of 24 months. In April 2013, the Customer emailed an opt-out request requiring the Appellant to cease using his personal data in direct marketing. The Appellant acknowledged receipt of the Customer's opt-out request by sending a reply to his email address.

On 17 May 2013, a telemarketing staff member of the Appellant (the Staff) called the Customer at his mobile phone, but the call was not answered. The Staff then left a voice message reminding the Customer that his service contract was due to expire. The Staff also mentioned that the service charge would be revised in June, but the Customer would be granted a concession to pay the current service charge if he chose to renew his contract by May. The Staff also left her surname and phone number for the Customer to revert.

The Appellant argued that its Staff was only providing "after sale service" to existing customers and reminding them of the approaching of the expiry of their contracts. The Appellant hence submitted that reminding its customers to renew their contracts was an essential service, and had nothing to do with "direct marketing". The Appellant did provide training and departmental guidelines to its employees to ensure that they would convey

6月份開始會調整續約價錢，以及5月份續新約有內部優惠。上訴人的「品質確定」部門每星期會抽查1至2個電話，目的是監察員工與客戶之間的談話內容。

accurate information to its customers, and also provided a training script to its employees for customers who had opted out from using their personal data in direct marketing. However, the voice message of the Staff deviated from the said script by adding that the service charge would be revised for contracts to be renewed in June and that concessionary service charge would be granted for renewal in May. The quality assurance department of the Appellant would choose one to two phone calls each week for the purpose of monitoring the conversation between its employees and customers.

裁判官的裁斷

(a) 裁判官指出上訴人要求員工包括該職員，在該客戶遠遠未到合約期滿（即6個多月前），已用不同方式，包括致電、發電郵及短訊予該客戶，美其名是提醒他合約快滿，實質是希望該客戶續約。電話留言旨在客戶續約，即向該客戶（一位指名特定人士）送交資訊提供上訴人的服務，故構成「直接促銷」。

(b) 裁判官不信納被告致電予該客戶，當時只是純粹提醒他快約滿，也不認同續約並非「新目的」。

(c) 裁判官認為上訴人不單沒有採取合理預防措施，沒有作出一切應作的努力去避免罪行，反而講稿正好反映出上訴人漠視已表明不同意個人資料用作直銷用途的客戶的意願，巧立名目，以提醒約滿為名，而實質是向現有客戶直接促銷被告的服務，據此裁定上訴人罪名成立。

The Magistrate's Findings

(a) The Magistrate noted that the Appellant required its employees including the Staff to communicate with the Customer by different means, including by phone, email, and SMS, notwithstanding that there was still a long period of time (i.e. more than 6 months) before the expiry date of the Customer's contract. While these communications purported to remind the Customer of the soon expiry of his contract, they in substance aimed to obtain a renewal of his contract. The voice message was sent to a specific person, i.e. the Customer, for the purpose of providing information in offering the Appellant's service on contract renewal, and thus amounted to "direct marketing".

(b) The Magistrate did not accept the call made to the Customer aimed at reminding him that his contract was due to expire. Nor did the Magistrate agree that the renewal of contract was not a "new purpose".

(c) The Magistrate considered that the Appellant had not taken all reasonable precautions and exercised all due diligence to avoid the commission of the offence. On the contrary, the script reflected that the Appellant had neglected the will of its customer not to use his personal data in direct marketing. The Magistrate found that the Appellant had disguised the direct marketing of its service to an existing customer in the name of reminding him the imminent expiry of his contract, and convicted the Appellant.

上訴

上訴理由（一）

上訴人指條例第35G條的罪行元素，控方須證明被控人有犯罪意圖，而相關犯罪意圖是意圖直接促銷，但裁判官沒有正確擬定這罪行的罪行元素，尤其是所須犯罪意圖，亦沒有在證據上作出充份的討論、剖析和裁決。

法官援引HKSAR v Hin Lin Yee（2010）13 HKCFAR 142和Kulemesin v HKSAR（2013）16 HKCFAR 195的案例，認為涉案罪行本質上

The Appeal

Ground of Appeal (1)

The Appellant submitted that regarding the elements of the offence under section 35G of the Ordinance, it is incumbent on the prosecution to prove mens rea of the accused, i.e. the intent to commit the direct marketing offence, but the Magistrate had failed to set out properly the elements of the offence, in particular the mens rea, and had failed to adequately consider, analyse and adjudicate the evidence on this issue.

Relying on HKSAR v Hin Lin Yee (2010) 13 HKCFAR 142 and Kulemesin v HKSAR(2013) 16 HKCFAR 195, the Judge considered that section 35G is a regulatory offence in nature. Though the

是規管性的，雖然視乎情節，判罰可以不輕，但受社會非議的程度畢竟遠低於本質上是犯罪行為那類罪行。從條文的用字和提供的免責辯護來看，都是顯示立法原意是不須證明犯罪意圖。從現實角度，不少資料使用者都是機構而非個人，但直接做出違規的人往往是這些機構的僱員，而非僱主或負責人，如要證明犯意便大大削弱條例的效用，反之，移除須證明犯罪意圖的要求，會有助體現立例的目的，和加强大眾對規例的遵守。

penalty can be substantial depending on the facts of the case, the culpability of the offence is far less than those offences which are truly criminal in nature. The language of the statute and the defence provided therein also indicate that the legislature intends the proof of mens rea is unnecessary. In practice, many data users are organisations and not individuals. Those who carried out the acts that contravened the requirement are usually employees of these organisations, not employers or persons-in-charge. The effect of the Ordinance will be greatly undermined if mens rea must be proved. On the contrary, displacing the requirement of proving mens rea will enhance the implementation of the legislative intent and compliance of the Ordinance by the public at large.

法官裁定涉案罪行是嚴格法律責任罪行，控方要在毫無合理疑點的尺度下證明下列罪行元素：

The Judge ruled that the offence was one of strict liability. The prosecution must prove beyond all reasonable doubt the following elements of the offence:

(1) 有資料當事人要求了資料使用者停止在直接促銷中使用該資料當事人的資料；
(2) 資料使用者收到資料當事人這要求；及
(3) 資料使用者沒有依從這要求。

(1) a data subject required a data user to cease using his personal data in direct marketing;
(2) the data user received such requirement from the data subject; and
(3) the data user failed to comply with the requirement.

當上述3事項都被證實後，則除非被控人可依賴第35G(5)條的免責辯護，否則便須定罪。在本案中，控方須證明的罪行元素，毫無疑問都被證實了，控方並不須證明犯意，這上訴理由不成立。

Once all these 3 elements are proved, the accused will be convicted unless he can rely on the defence under section 35G(5). In the present case, the prosecution had proved all the necessary elements of the offence beyond doubt, and was not required to prove the mens rea.

This ground of appeal could not be sustained.

上訴理由（二）

Ground of Appeal (2)

「直接促銷」和「廣告宣傳」

"Direct Marketing" and "Advertising"

上訴人認為在詮釋第35G條的「直接促銷」這詞彙時，釋義條文中「要約」應採用合約法中對這概念的理解，而「廣告宣傳」是指向普羅大眾發放資料的行為。

The Appellant submitted that when interpreting the term "direct marketing" in section 35G, the word "offering" should be given its meaning in contract law. As regards "advertising", it refers to the sending of information to the public at large.

法官根據《釋義及通則條例》第19條，認為應採用目的釋義去詮釋有關條文，如果要引用民事合約法中「要約」的概念於本案的刑事議題，未免過於狹窄。即使一個糾纏不休、目的明顯是在推銷貨物或服務，但因推銷對象推辭或沒有正面回應以致未述及貨物的詳細出售條件或服務的詳細提供條件，在合約法下未成為要約的情況，便會因此而未構成直接促銷，不受此法規管，這明顯不是立法意圖。「要約提供」的英文版本是'offering'，'offering'可包含提出會提供這意思，中文版本採用了「要約提供」一詞的意思，是應該包括提出會提供

In reliance of section 19 of the Interpretation and General Clauses Ordinance, the Judge adopted a purposive interpretation of the relevant provision. The interpretation would be too narrow, if applying the concept of "offer" in contract law to this criminal case. A person importunes with the obvious intention of marketing goods or services, but owing to rejection of the target customer or absence of a positive response, may be unable to convey the terms of sale in details. This cannot constitute an "offer" in contract law. It is certainly not the legislative intent that such act does not amount to direct marketing, and therefore not to be governed by the Ordinance. "Offering" includes the meaning of offering to provide. The Chinese term should embody the meaning of offering to provide as well. Section 10B of the Interpretation and General

這行為的。法官更引用《釋義及通則條例》第10B條，即使條例的中文本和英文本出現意義分歧，在考慮了條例的目的和作用，要採用最能兼顧及協調兩文本的意義，結論也是一樣。

Clauses Ordinance provides that if a comparison of the English and Chinese language texts discloses a difference of meaning, having regard to the object and purposes of the Ordinance, the meaning which best reconciles the texts shall be adopted. The Judge took the view that adopting the approach in section 10B actually came to the same conclusion.

至於「廣告宣傳」方面，法官認為如果只限於向大眾發放資料的行為，而排除向個別人士打電話的行為，則訂立第35G條的目的之效果便會大為削弱。況且，案中證據顯示，上訴人做法，即所謂提醒客戶的做法，並非只是針對本案的投訴人，而是會向所有這類客戶做的，故法官認為上訴人的行為構成為服務可予提供而進行廣告宣傳。

As regards the meaning of "advertising", the Judge considered that the effect of section 35G would be greatly undermined, if it only applied to sending information to the public at large, thus excepting the making of telephone call to an individual. In addition, the evidence of the case showed that the Appellant's act of reminding its customers was not only targeted at the complainant of this case, but also all customers within the same category. Thus, the Judge considered that the Appellant's act amounted to advertising of the availability of services.

保障資料第3原則：新目的

Data Protection Principle 3: New Purpose

上訴人指條例第35G條和保障資料第3原則背後的目的是一致的，而法例規定的設計也旨在確保有效的商業運作和個人私隱的保障間作出平衡。如果公司的行為不是為了新目的，便不應屬於第35G條的規範之內，條例針對的是防止冷電（陌生推銷電話）。

The Appellant submitted that the purpose of section 35G of the Ordinance is consistent with that of DPP3. The law aims to strike a balance between ensuring business efficacy and protecting personal privacy. The act of the company should not be regulated by section 35G, if it is not intended for a new purpose. The Ordinance aims to prevent cold calls from being made.

法官同意裁判官的裁定，在本案中，該職員以提示合約將會期滿為開場白，可是細察留言的整體，該職員是在要約提供服務，即提供一個優惠讓客戶繼續享用價錢原本會不同的同樣服務、或在為該等服務可予提供而進行廣告宣傳。儘管提醒客戶約滿的原意是好的，但該職員所做和所表達的內容，不只限於提醒客戶，本身已構成直接促銷。

The Judge agreed with the Magistrate's ruling that in this case, the Staff's reminder of the expiry of contract was just a pretext to start the dialogue. Upon scrutinising the entire message, one would notice that the Staff was offering the availability of services, i.e. offering a concession to the customer in enjoying the same service at a rate which would otherwise be different, or advertising the availability of such services. Reminding customers that their contracts will soon expire is a good service. But what the Staff had done and said exceeded the realm of a reminder, and fell within the ambit of direct marketing.

故此，法官裁定這上訴理由不成立。

Hence, the Judge held that this ground of appeal failed.

上訴理由（三）

Ground of Appeal (3)

上訴人批評裁判官考慮了與控罪無關的事宜，和／或沒有考慮與控罪有關的事宜，針對的事項如下：

(1) 在客戶約滿前6個月開始提醒客戶約滿；
(2) 提醒客戶約滿所採用的媒體是否恰當；
(3) 客戶約滿事宜只為用作開場白；
(4) 上訴人在審訊時呈交作證物的講稿內容。

The Appellant submitted that the Magistrate had taken into account considerations irrelevant to the charge, and/or failed to consider issues that were relevant to the charge, such as:

(1) starting to remind customers the soon expiry of their contracts as early as 6 months ahead;
(2) whether the means used for reminding customers was appropriate;
(3) reminder of expiry of contract was just a pretext to start the dialogue; and
(4) the content of the script adduced by the Appellant during the trial.

法官認為裁判官雖然沒有很明確地述明她顧及這些事項的原因，但看來可能是在審視那次留言的真正目的或意圖，是無可厚非的。既然控方其實毋須證明留言的目的或意圖，裁判官故此也不必顧及這些事項，可是顧及了也不等於定罪並不穩妥，尤其是裁判官作出了的事實裁斷涵蓋了控方須證明的事情和辯方是否可倚賴法定免責辯護。

The Magistrate had not explicitly stated her reasons for taking these issues into account. However, it seemed that she was examining the genuine purpose or intention of the Appellant's leaving of the voice message. Having already ruled that the prosecution need not prove the purpose or intention of the Appellant's leaving of the voice message, the Judge considered that the Magistrate was not required to take these issues into account but having done so did not mean the conviction was unsafe. This was especially the case given the Magistrate had made her finding of facts on all matters that the prosecution was incumbent to prove, and whether the defence could invoke the statutory defence.

故此，法官裁定這上訴理由不成立。

Therefore, the Judge held that this ground of appeal was unsubstantiated.

上訴理由（四）

Ground of Appeal (4)

上訴人指裁判官在作出對上訴人不利的裁斷時，顧及了證據中含有沒有被檢控的罪行的證詞，包括上訴人員工曾經打電話給這名客戶的次數、會否嘗試用其他方式聯絡客戶、為何不發信給客戶等等。

The Appellant argued that when the Magistrate made the adverse finding of facts against the Appellant, she had considered those parts of the testimony relating to the offences not charged against it which included the number of times the Appellant's employee(s) had called the Customer, whether the Appellant had used other means to contact customers, and why the Appellant's employees had not sent letters to customers, etc.

沒有被檢控的罪行有特定的意思，源自終審法院案例Chim Hon Man v HKSAR（1999）2 HKCFAR 145之後的一系列裁決，法官認為上述事情不算是案例所述的沒有被檢控的罪行。

Offences not charged has a designated meaning, which originated from a series of judgments subsequent to the Court of Final Appeal judgment in Chim Hon Man v HKSAR (1999) 2 HKCFAR 145. The Judge considered that the above issues did not amount to offences not charged as decided by the Court of Final Appeal.

上訴人提證曾向員工提供守則和訓練，但具體細節不詳。即使根據上訴人的指引講稿的內容，也包括主動地提出可為續約計劃作出介紹，法官認為這是構成直接促銷。即使客戶沒有即時作出正面回應，員工也會嘗試徵詢客戶可否改天再聯絡他，這樣的安排，難以說盡了法定免責辯護的要求。為了達到提醒客戶約滿後會被徵收原本較高的款項，法官認為以書面方式通知客戶，因為用字明確又不會涉及人為過失，最能達到目的，又必能合乎法定免責辯護的要求，是其中一個理想做法。相對上訴人在案發時採用的方法而言，一來已可能構成促銷，二來實難稱可以確保不會有越界的行為；上訴人當時的措施是就員工向客戶的電話談話錄音，但此舉未能確保員工的談話內容沒有違規。法官認為上訴人並沒有採取所有合理措施和作出一切應作的努力，以避免不依從該客戶的要求，

The Appellant had adduced evidence to prove that guidance and training were provided to its employees, but offered no further details. According to the script provided by the Appellant, its content included taking the initiative to introduce the terms of the contract renewal which the Judge considered as direct marketing. Even if the customer did not give a positive response, the employee might attempt to ask the customer if he could make a call later. These measures could hardly be regarded as satisfying the requirements of the statutory defence. The Judge considered that one desirable means of reminding the customers was informing them in writing that they might face a higher rate of service charge after expiry of their contracts. This method has the advantage of achieving the desired purpose effectively, avoiding human errors given clear language is used, and satisfying the requirements of the statutory defence. The method adopted by the Appellant on the one hand amounted to direct marketing, and on the other hand could not avoid its employees crossing the line. The measure taken by the Appellant at that time was to record the telephone

停止使用他的個人資料於直接促銷，所以未能成功倚賴法定免責辯護。	conversation between its employees and customers. However, such measure could not ensure the content of its employees' conversations was not violating the law. Hence, the Judge considered that the Appellant could hardly be said to have taken all reasonable precautions and exercised all due diligence to avoid non-compliance with the Customer's request, i.e. to cease using his personal data in direct marketing. The Appellant could not successfully invoke the statutory defence.
法官據此裁定定罪是穩妥的，所以駁回上訴。	The Judge therefore considered the conviction was safe and dismissed the appeal.
胡關李羅律師行委派 余承章資深大律師及李頌然大律師 代表上訴人	Mr Selwyn Yu, SC and Mr Tony Li instructed by Messrs. Woo, Kwan, Lee & Lo, for the Appellant
律政司高級助理刑事檢控專員單偉琛 代表答辯人（香港特別行政區）	Mr Eddie Sean, Senior Assistant Director of Public Prosecutions of the Department of Justice for the Respondent (Hong Kong Special Administrative Region)

感言 Sharing

資料私隱保障是其中一個最動態的法律範疇。私隱法例的修訂有時是由一些「事件」所驅使，以及為了跟上急速科技發展的需要。因此，作為公署的律師對工作從不會感到乏味。

我在2010年加入公署。當時公署剛剛發表被傳媒大肆報道的「八達通事件」的調查報告，社會對個人資料私隱的關注提升到條例生效以來的高點。「八達通事件」亦促使規管直接促銷的模式出現大改革。我在公署參與的首個項目就是2012年條例修訂工作。

公署正就條例的現行保障與歐盟最新發展的《通用數據保護條例》進行比較。為緊貼資料私隱保障的全球趨勢，公署再次踏前一大步。我很高興能加入這專業及有遠見的團隊。

公署的工作為我帶來不斷的學習機會。

Data privacy protection is one of the most dynamic areas of law, and a change of the privacy law is sometimes driven by "incidents" and the need to keep up with rapid technological advances. Therefore, working as a legal counsel in the PCPD would never be boring.

I joined the PCPD in 2010 when the widely publicised investigation report on the "Octopus incident" had just been released, and the community's awareness of personal data privacy had reached an all-time high at that time since the enactment of the Ordinance. This also prompted a complete revamp of the regulatory regime for direct marketing. My first project in the PCPD was the 2012 Ordinance review exercise.

The PCPD is now comparing the current legislation protection under the Ordinance with the newly released EU General Data Protection Regulation. The PCPD is again taking a great leap forward in keeping abreast of the global trend in data privacy protection. I am delighted to be a part of the professional and forward-looking team in the PCPD.

I am always learning in the PCPD.

程潔美
律師
Catherine CHING
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，負責聆訊投訴人或被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2016至2017年度決定的／接獲的行政上訴案件的統計資料

本年度共有28宗上訴個案完結，及接獲34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。

APPEALS LODGED WITH THE ADMINISTRATIVE APPEALS BOARD

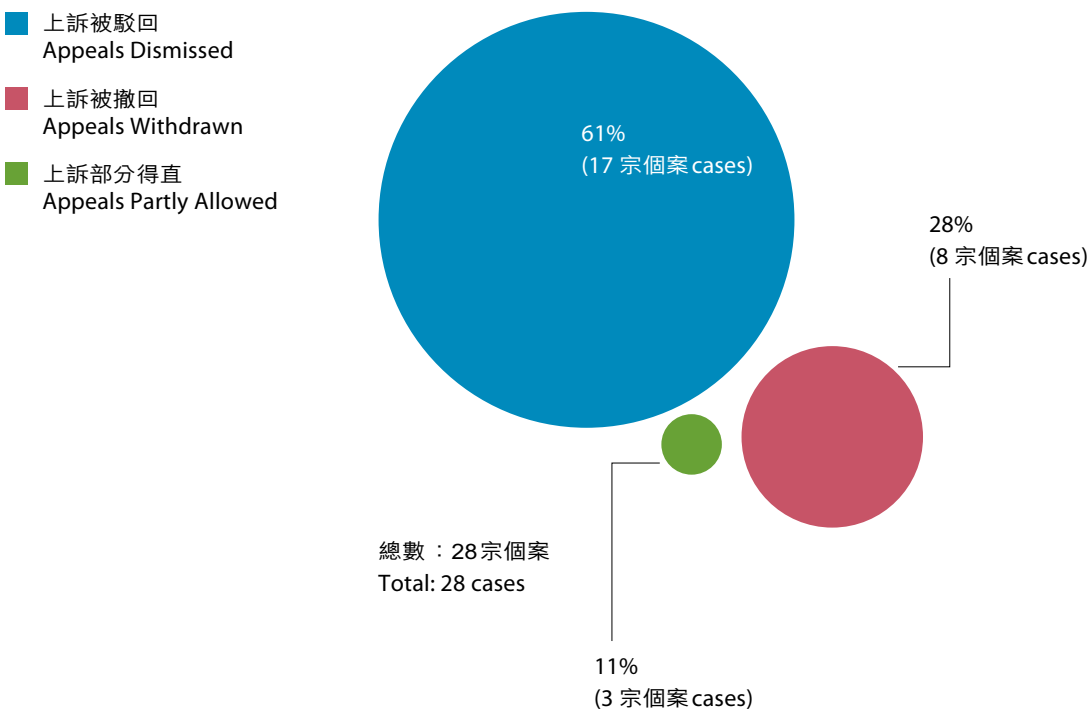
The Administrative Appeals Board (AAB), established under the Administrative Appeals Board Ordinance (Cap 442), is the statutory body that hears and determines appeals against the Commissioner's decisions by a complainant, or by the relevant data user complained of.

Statistics of AAB cases concluded / received in the year 2016-2017

A total of 28 appeals were concluded and 34 new appeal cases were received during the report year.

Most of the appeals were eventually dismissed by the AAB or withdrawn by the appellants.

上訴的結果
Result of appeal case



在本年度接獲的34宗新上訴個案中，31宗是上訴私隱專員不進行或終止正式調查的決定。私隱專員作出該等決定是基於(i)投訴被視為不是真誠地作出；(ii)投訴的主要事項與個人資料私隱無關；(iii)沒有表面證據支持指稱的違反行為；(iv)完全沒有涉及保障資料原則，沒有收集個人資料及／或(v)被投訴者已採取補救行動糾正所指稱的違反行為。

Of the 34 new appeal cases received in the year, 31 appealed against the Commissioner's decision not to carry out or terminate a formal investigation. The Commissioner made these decisions considering: (i) the complaints were not considered to have been made in good faith; (ii) the primary subject matter of the complaint was considered not to be related to personal data privacy; (iii) there was no prima facie evidence to support the alleged contravention; (iv) the DPPs were considered not to be engaged at all, in that there had been no collection of personal data and / or (v) the party complained against had taken remedial action to rectify the alleged contraventions.

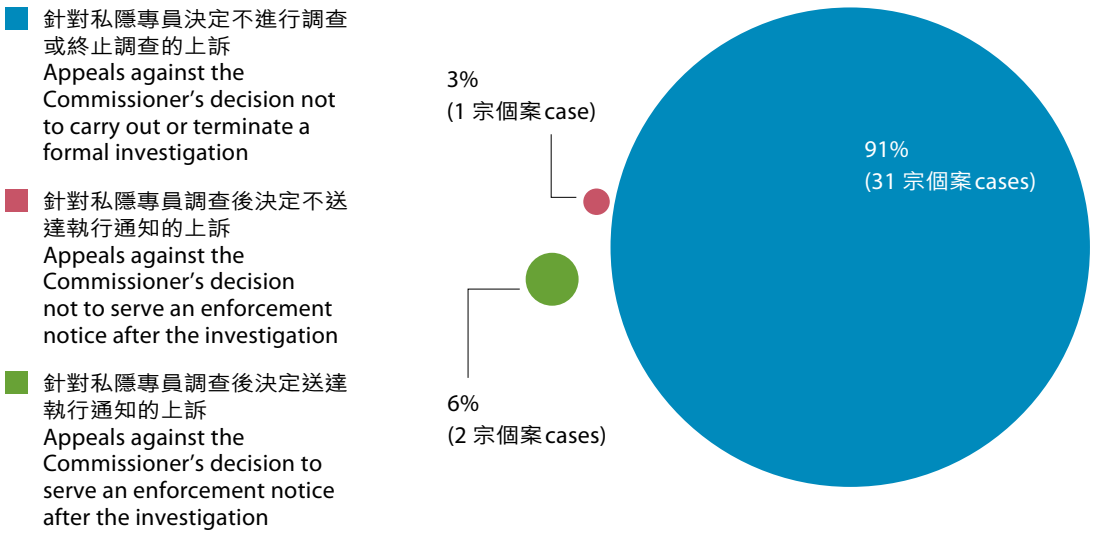
一宗是上訴私隱專員在作出調查後不送達執行通知的決定。

One appeal was against the Commissioner's decision not to serve an enforcement notice after the investigation.

餘下的兩宗是上訴私隱專員在作出調查後送達執行通知的決定。

The remaining two appeals were against the Commissioner's decision to serve an enforcement notice after the investigation.

上訴所涉的性質
Nature of the appeals

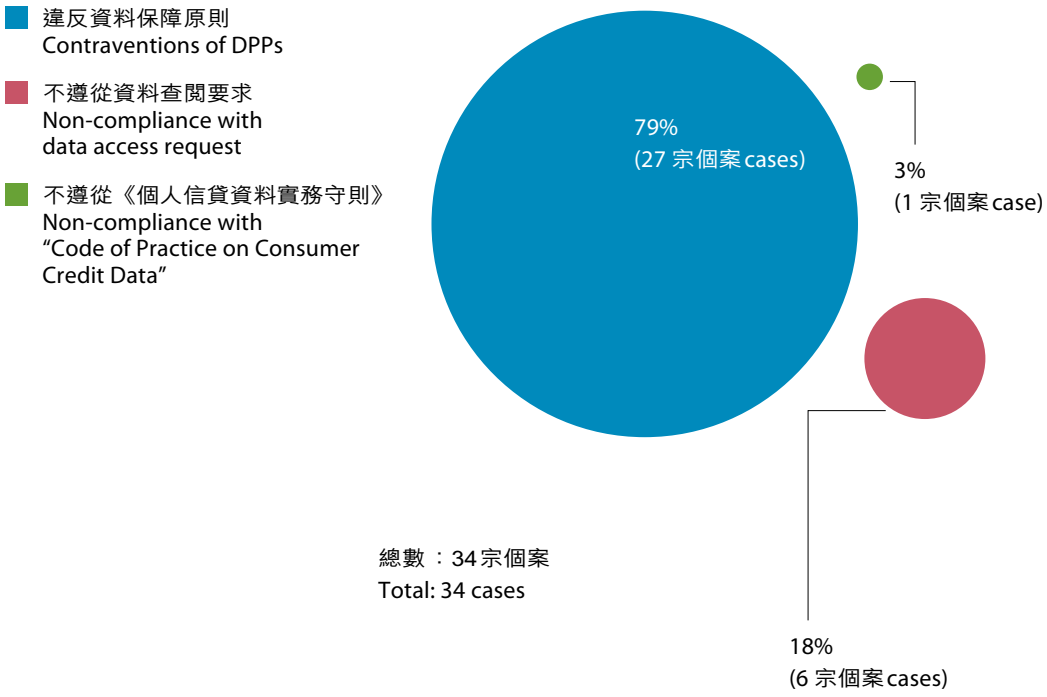


總數：34宗個案
Total: 34 cases

在34宗新上訴個案中，27宗涉及投訴違反保障資料原則。六宗涉及不依從查閱資料要求，一宗則關於《個人信貸資料實務守則》。

Of the 34 new appeal cases, 27 cases involved complaints concerning breaches of the DPPs, six cases involved non-compliance with data access requests, and one case concerned about the "Code of Practice on Consumer Credit Data".

上訴所涉的條例的規定
The provisions of the Ordinance involved in the appeals



有關投訴違反保障資料原則的27宗上訴中（一宗個案可牽涉多於一項保障資料原則），七宗涉及超乎適度及／或不公平收集個人資料；兩宗涉及個人資料的準確性及保留期間；20宗涉及未經資料當事人同意下使用及／或披露其個人資料，及六宗涉及個人資料的保安。

Of those 27 appeal cases involving the complaints concerning contraventions of the DPPs, seven cases involved excessive and / or unfair collection of personal data; two cases involved accuracy and duration of retention of personal data; 20 cases involved the use and / or disclosure of personal data without the data subject's prior consent, and six cases involved security of personal data.

上訴個案簡述一（行政上訴委員會上訴案件第 55/2014號）

第19(1)條下的40日規定應由何時開始計算——醫生把病人的個人資料交予律師以尋求法律意見，是否可援引第60B(c)條下的豁免

聆訊委員會成員：吳敏生先生（副主席）
Mr Philip Chan Kai-shing（委員）
鄭偉雄先生（委員）

裁決日期：2016年6月30日

投訴內容

上訴人於2008年12月至2011年12月由一名醫生治療其膝痛及其他問題。2012年6月2日，該醫生透過律師發信通知上訴人終止醫生與病人的關係。上訴人不滿該醫生的決定，向該醫生提出多個查閱資料要求。其後，她向私隱專員投訴該醫生沒有依從她於2013年2月24日提出的查閱資料要求及向律師披露她的醫療資料。

私隱專員的決定

關於依從查閱資料要求，私隱專員認為除了上訴人的指稱，沒有證據證明該醫生向上訴人隱藏任何文件。至於該醫生向律師披露上訴人的醫療資料，私隱專員發現該披露的目的是為了處理上訴人的查閱資料要求，即索取其醫療資料的複本。私隱專員因此認為有關披露是與當初為了處理上訴人的有關病情及治療的原本收集目的直接有關。此外，有關披露完全符合條例第60B(c)條的規定，因使用上訴人的個人資料是為確立、使用、行使或維護在香港的法律權利，故獲豁免而不受第3保障原則的條文所管限。

上訴

在聆訊中，上訴人同意該醫生依從該查閱資料要求的程度是足夠的。餘下的問題是該醫生是否未能在收到該查閱資料要求後40日內依從該要求。

APPEAL CASE NOTE ONE (AAB APPEAL NO.55/2014)

When the 40-day period under section 19(1) should start to run – whether a doctor passing his patient's personal data to his solicitors for seeking legal advice can invoke the exemption under section 60B(c)

Coram : Mr Alan Ng Man-sang (Presiding Chairman)
Mr Philip Chan Kai-shing (Member)
Mr Nelson Cheng Wai-hung (Member)

Date of Decision : 30 June 2016

The Complaint

The Appellant was a patient of a doctor from December 2008 to December 2011 for treatment of her knee pain and other problems. On 2 June 2012, the doctor through his solicitors issued a letter to the Appellant informing her the termination of their doctor-and-patient relationship. Dissatisfied with the doctor's decision, the Appellant made a number of data access requests to the doctor. Subsequently, she complained to the Commissioner against the doctor for his failure to comply with her data access request (DAR) made on 24 February 2013 and the disclosure of her medical information to his solicitors.

The Commissioner's Decision

With respect to the compliance with the DAR, the Commissioner was of the view that apart from the Appellant's mere allegation, there was no evidence to support that the doctor was withholding any documents from the Appellant. As for the disclosure of the Appellant's medical information by the doctor to his solicitors, the Commissioner found that the purpose of the disclosure was for handling the Appellant's DAR which sought to obtain copies of her medical information. The Commissioner considered that such use was directly related to the original purpose of collection which was for handling matters relating to her medical condition and treatment. In addition, such disclosure fell squarely within section 60B(c) of the Ordinance which exempted liability from the provisions of DPP3 where the use of the data was required for establishing, exercising or defending legal rights in Hong Kong.

The Appeal

At the hearing, the Appellant agreed that there was sufficient compliance with the DAR. The remaining question was whether the doctor had failed to comply with the DAR within 40 days after receiving it.

行政上訴委員會認為該查閱資料要求有欠清晰。上訴人描述所要求的資料十分廣闊，上訴人首先要求該醫生提供厚達數吋的病歷檔案內所有文件的索引，她再從該索引中找出她沒有的文件，然後要求該醫生提供那些文件。然而，上訴人也可能是以該查閱資料要求向該醫生索取她所欠缺的醫療記錄，以便她集齊一套完整的記錄。在40日期限開始計算前，上訴人是有責任澄清查閱資料要求中所要求的文件範圍。因此，40日期限是在該醫生於2013年4月27日收到修訂的查閱資料要求才開始計算。由於上訴人最終從該醫生的律師收到281頁醫療記錄複本，而且上訴人在上訴聆訊中承認對於該醫生依從該修訂的查閱資料要求的足夠程度並無爭議，因此行政上訴委員會裁定沒有表面證據證明該醫生沒有遵守條例第19(1)[2]條或保障資料第6(b)(i)原則。

The AAB took the view that the DAR lacked clarity. The description of the requested data was open to an interpretation that the Appellant requested first from the doctor an index of all the documents contained in the several inches thick multiple medical files, then from the index supplied, worked out what documents she did not have, and thereafter requested from the doctor for those documents she did not have. However, the DAR might also mean that the Appellant requested from the doctor all medical records which she did not have, so that she could have a complete set of all records. It was incumbent on the Appellant to clarify the scope of the documents requested in the DAR before the 40-day period started to run. Hence, it was only until the receipt of the amended DAR on 27 April 2013 that the 40-day period commenced. Given that the Appellant eventually received 281 pages of copy medical records from the doctor's solicitors and the Appellant's concession at the appeal hearing that there was no dispute as to the sufficiency of compliance with the amended DAR, the AAB held that there was no prima facie non-compliance under section 19(1)[2] of the Ordinance or DPP6(b)(i).

該醫生收集上訴人個人資料的目的是處理有關其病情及治療的事宜。很明顯，該醫生把281頁醫療記錄複本披露予律師是與該查閱資料要求有關，那是與該醫生收集上訴人的個人資料的目的有關。因此，行政上訴委員會同意私隱專員的觀點，認為沒有表面證據證明有違反保障資料第3原則的情況。

The doctor's purpose of collecting the Appellant's personal data was to handle matters relating to her medical condition and treatment. It was plain that the purpose for which the doctor disclosed the 281 pages of copy medical records to his solicitors was in relation to the DAR, which in turn related to the doctor's purpose of collecting the Appellant's personal data. The AAB therefore agreed with the Commissioner that there was no prima facie case of contravention of DPP3.

即使出現違反保障資料第3原則的情況，行政上訴委員會認為條例第60B(c)條的豁免適用於本個案。第60B(c)條不應只局限於有關資料使用者已展開法律程序或提出法律申索或投訴的情況，還有的情況是有關資料使用者希望尋求法律意見，作出預防行動，或為了在未來的潛在紛爭中保障其合法權利。因此，行政上訴委員會最後認為私隱專員在這方面所作的決定無誤。

Even if there was a breach of DPP3, the AAB took the view that the exemption provided under section 60B(c) of the Ordinance would be applicable in this case. It would be artificial to suggest that section 60B(c) should be restricted to situations where legal proceedings, legal claims, or complaints have been commenced or lodged against the relevant data user. There might be cases where the relevant data user would like to obtain legal advice on the appropriate prophylactic actions to be taken in a bid to prevent the situation from ballooning into a formal dispute, or for the purpose of defending his legal rights in the future potential dispute. Therefore the AAB concluded that the Commissioner's decision in this aspect could not be faulted.

行政上訴委員會駁回上訴。

The AAB dismissed the appeal.

上訴人親身應訊

The Appellant acting in person

陳淑音律師
代表答辯人（香港個人資料私隱專員）

Miss Cindy Chan, Legal Counsel
for the Respondent (Privacy Commissioner for Personal Data, Hong Kong)

孖士打律師行Miss Catherine Yeung律師
代表受到遭上訴所反對的決定所約束的人（醫生）

Miss Catherine Yeung, Solicitor of Messrs. Mayer Brown JSM
for the Person Bound by the decision appealed against (Doctor)

[2] 第19(1)條：資料使用者須在收到查閱資料要求後的40日內，依從該項要求。

[2] Section 19(1) : A data user must comply with a data access request within 40 days after receiving the request.

上訴個案簡述二（行政上訴委員會上訴案件第 54/2015號）

保險公司對客戶的個人資料有否採取所有合理地切實可行的保安措施 —— 上訴人一直未有收到正式保單 —— 懷疑有人在回條上偽冒上訴人的簽名確認收了保單 —— 審視保險公司的保安機制是否符合保障資料第4原則的要求

聆訊委員會成員：廖文健先生（副主席）
郭斯聰先生（委員）
袁妙齡女士（委員）

裁決日期：2016年9月13日

投訴內容

上訴人在2014年8月通過保險公司的業務代表投保了一份保險計劃，由於一直未有收到正式保單，於是在2015年向保險公司查詢。保險公司表示上訴人已於2014年9月22日簽署「保單收訖確認回條」。上訴人懷疑有人偽冒她的簽名，認為保險公司對客戶個人資料的保安不足，以致她的個人資料可能被未獲授權的人士查閱，遂向私隱專員作出投訴。

私隱專員的決定

保險公司向私隱專員解釋其一般做法:

(a) 當保單發出後，會經內部郵遞將保單送往相關的分區辦事處，由分區的秘書或助理簽收後，再分發予相關的業務代表。業務代表隨後將保單及「保單收訖確認回條」）親手、以掛號或速遞郵件派送予客戶，並要求客戶簽署「保單收訖確認回條」。

(b) 同時保險公司會以平郵郵寄一封通知書予客戶，告訴客戶保單已發出，並提醒客戶若在通知書發出後九天仍未收到保單，應致電保險公司的客戶服務熱線查詢。

APPEAL CASE NOTE TWO (AAB APPEAL NO.54/2015)

Whether an insurance company had taken all reasonably practicable steps in safeguarding the security of its customers' personal data – the Appellant had never received her insurance policy – the Appellant's signature on the acknowledgement receipt of insurance policy was suspected of being forged – the security measures adopted by the insurance company were examined under the requirements of DPP4

Coram : Mr Liu Man-kin (Presiding Chairman)
Mr Kwok Sze-chung (Member)
Ms Yuen Miu-ling (Member)

Date of Decision : 13 September 2016

The Complaint

In August 2014, the Appellant took out an insurance policy through an insurance agent of an insurance company. As the Appellant had not received her insurance policy, she made enquiries with the insurance company in 2015, and was informed r that she had already signed the acknowledgement receipt of the insurance policy on 22 September 2014. The Appellant suspected that someone had forged her signature on the acknowledgement receipt, and her personal data might have been accessed by unauthorised persons due to the inadequacy of security measures adopted by the insurance company. Hence, she lodged a complaint with the Commissioner against the insurance company.

The Commissioner's Decision

The insurance company explained its usual practice to the Commissioner :

(a) An insurance policy would be delivered to the relevant branch office by internal mail after it was issued, and the secretary or assistant of the branch office would then acknowledge receipt before passing it to the relevant insurance agent. The agent would deliver the insurance policy to the customer by hand, by registered mail, or by courier, and request the customer to acknowledge receipt of the insurance policy.

(b) At the same time, the insurance company would send a notice to the customer by ordinary mail, informing him that the insurance policy was issued and reminding him to contact the Customer Service Hotline of the insurance company if he did not receive it within nine days from the issuance date of the notice.

上訴人表示沒有收到保險公司郵寄給她的上述通知書。

私隱專員認為保險公司已要求業務代表親手、以掛號或速遞郵件派送保單給客戶，並由客戶簽收；發出保單的同時，以平郵寄出通知書予客戶，只是額外和保險的做法，萬一客戶未收到保單，亦可致電保險公司的客戶服務熱線查詢。發生在上訴人身上的這種情況，既收不到保單，又收不到通知書，加上有人偽冒她在「保單收訖確認回條」上簽名，以致保險公司不知問題所在，直至上訴人投訴才知道，這是非常罕見的。故私隱專員認為保險公司已採取合理地切實可行的步驟，去確保保單能妥善地派遞到客戶手中，沒有違反保障資料第4原則的規定。

The Appellant stated that she had not received the said notice from the insurance company.

The Commissioner found that the insurance company had taken all reasonably practicable steps to ensure that its insurance policies were properly delivered to its customers. According to the procedures, an insurance agent was required to deliver the insurance policy to his customer by hand, by registered mail, or by courier and to request the customer to acknowledge receipt. The additional step to send out the said notice to customers by ordinary mail was a precautionary measure to ensure that the customer would call the Customer Service Hotline for enquiries if he did not receive the insurance policy. It was a very rare case that (i) the Appellant received neither the insurance policy nor the notice; (ii) someone had forged her signature on the acknowledgement receipt; and (iii) the insurance company had not realised this until the Appellant lodged the complaint. That being the case, the insurance company had not contravened the requirements of DPP4.

上訴

The Appeal

行政上訴委員會認同保障資料第4原則規定資料使用者只須採取所有合理地切實可行的步驟，而非百份百地保證資料使用者持有的個人資料不受未經准許或意外的查閱、處理、刪除、喪失或使用；故即使保險公司無法確定保單在何時被何人簽收，並不能即時斷定保險公司違反保障資料第4原則，而須詳細審視保險公司的保安機制。

The AAB agreed that DPP4 requires data users to take only all reasonably practicable steps to ensure (but not fully guarantee) that personal data held by them are protected against unauthorised or accidental access, processing, erasure, loss, or use. Although the insurance company could not ascertain who signed on the acknowledgment receipt and when it was signed, one could not then conclude that the insurance company had contravened DPP4, without first examining its security mechanism.

行政上訴委員會在審視過有關保安機制後，認為保險公司的程序符合保障資料第4原則內的「合理地切實可行」的要求，尤其是上述(a)及(b)兩項措施分別由保險公司不同職員負責，讓客戶收到保單，並可以在最早的時間向保險公司查詢有關派送保單的事情。

After examining the security mechanism of the insurance company, the AAB was of the view that its procedures met the requirement of "reasonably practicable" under DPP4. In particular, the AAB had taken into account that steps (a) and (b) above were handled by different staff of the insurance company to ensure the delivering of insurance policies to customers and allowing them to enquire their delivery at the earliest possible time.

行政上訴委員會同意私隱專員的看法，透過保險公司給私隱專員的書面回應及出示的「保單收訖確認回條」和通知書副本，在「相對可能性的衡量」("balance of probabilities")的基礎上，接納保險公司在上訴人的個案中，是有依據既定的程序送出保單和通知書。

The AAB agreed with the Commissioner that based on the written reply from the insurance company as well as its production of the copy acknowledgement receipt and notice, on a balance of probabilities, the insurance company did deliver the insurance policy and notice in accordance with its established procedures.

行政上訴委員會駁回上訴。

The appeal was dismissed.

上訴人親身應訊

The Appellant acting in person

陳淑音律師
代表答辯人(香港個人資料私隱專員)

Miss Cindy Chan, Legal Counsel
for the Respondent (Privacy Commissioner for Personal Data, Hong Kong)

受到遭上訴所反對的決定所約束的人(保險公司)缺席聆訊

The Person Bound by the decision appealed against (insurance company) acting in person (absent)

上訴個案簡述三（行政上訴委員會上訴案件第 3/2016號）

在選民登記中被盜用身份 — 收集個人資料屬被被動時，收集不是不合法或不公平 — 已採取所有合理地切實可行的步驟確保選民登記冊準確 — 在個人資料私隱權與個人的投票權之間作出平衡

聆訊委員會成員：林勁思女士（副主席）
藍偉才先生（委員）
羅志遠先生（委員）

裁決日期： 2016年12月6日

投訴內容

有人利用上訴人的個人資料填寫選民登記表，並且假冒上訴人簽名，然後遞交予選舉事務處。其後，上訴人的個人資料被納入臨時選民登記冊。上訴人在收到選舉事務處的登記通知書後發現此身份盜用。自此他以電話、電郵及傳真向選舉事務處投訴，但拒絕向該處提供簽署的書面通知，以刪除其個人資料。上訴人向公署投訴選舉事務處「不合法地取得」他的個人資料及將其個人資料納入正式選民登記冊前沒有核實其身份。

私隱專員的決定

私隱專員認為沒有證據證明選舉事務處不合法地取得上訴人的個人資料。選舉事務處在收取選民登記申請表（載有上訴人的個人資料）方面，角色被動。私隱專員亦認為選舉事務處已採取所有合理地切實可行的步驟，確保正式選民登記冊內的個人資料準確，尤其是上訴人從收到的登記通知書得悉有人冒充他提交虛假申請。在考慮到政府已公開表示會採取措施加強核實申請人的身份，而且選舉事務處亦把個案轉介警方作刑事調查，私隱專員依據

APPEAL CASE NOTE THREE (AAB APPEAL NO.3/2016)

Identity theft in voter registration – collection of personal data was not unlawful or unfair when collection was passive – all reasonably practicable steps had been taken to ensure accuracy of the register of voters – to balance between personal data privacy rights and voting rights of individuals

Coram : Ms Cissy Lam King-sze (Presiding Chairman)
Mr Lam Wai-choi (Member)
Mr Law Chi-yuen (Member)

Date of Decision : 6 December 2016

The Complaint

Someone had forged the Appellant's signature and submitted a false voter registration form to the Registration and Electoral Office (REO) using the personal particulars of the Appellant. Subsequently, the Appellant's personal particulars had been included in the provisional register of voters. The Appellant discovered the identity theft upon receiving the Notice of Registration from the REO and had since complained to the REO by telephone, email and fax but refused to provide a signed written notice to REO for deletion of his personal particulars. The Appellant lodged a complaint to the PCPD against REO for "unlawfully obtaining" his personal particulars and for failing to verify his identity before including his personal particulars in the final register of voters.

The Commissioner's Decision

The Commissioner found that there was no evidence to substantiate that REO had unlawfully obtained the Appellant's personal data. The REO took a passive role in receiving the application for voter registration which contained the Appellant's personal particulars. The Commissioner further found that the REO had taken all reasonably practicable steps to ensure the accuracy of the personal data in the final register of voters, in particular, the Notice of Registration which was received by the Appellant and which enabled the Appellant to find out the fact that someone had impersonated him to submit a false application. Having regard also to the fact that the Government

條例第39(2)(d)條及其處理投訴政策第8(h)段，行使酌情權決定對該投訴不作進一步調查。

had openly stated that it would take further measures to enhance the verification of applicants' identities and that REO had already referred the case to the police for criminal investigation, the Commissioner exercised his discretion not to investigate the complaint further pursuant to section 39(2)(d) of the Ordinance and paragraph 8(h) of the Commissioner's Complaint Handling Policy.

上訴

The Appeal

行政上訴委員會認為不合法地取得上訴人的個人資料及遞交虛假選民登記表的一方不是選舉事務處。由於選舉事務處收集該選民登記表是履行其法定責任，目的是與選舉登記主任的法定責任直接有關的，因此並無不合法或不公平，而所收集的個人資料亦沒有超乎適度。因此，選舉登記主任及選舉事務處沒有違反保障資料第1原則。

The AAB considered that the REO was not the party which obtained the Appellant's personal data illegally or submitted the false voter registration form. Since REO was discharging its statutory obligations by collecting the voter registration form for purposes directly related to the statutory obligations of the Electoral Registration Officer, there was nothing illegal or unfair about it, and the personal data collected was not excessive. Accordingly, the Electoral Registration Officer and the REO had not breached DPP1.

行政上訴委員會亦認為，選舉事務處使用該選民登記表中的上訴人個人資料發出登記通知書及之後把上訴人的資料納入臨時及正式選民登記冊的做法，全是依從法定規定及相關時限。選舉事務處如此使用上訴人的個人資料沒有違反保障資料第3原則的規定，因為這是與收集目的一致。

The AAB also considered that the use of the Appellant's personal data in the voter registration form to issue the Notice of Registration and the subsequent inclusion of the Appellant's particulars in the provisional and final registers of voters complied with the statutory requirements and the relevant timelines. Such use of the Appellant's personal data by the REO did not contravene the requirements of DPP3 as it was consistent with the purpose of collection.

關於保障資料第2(1)原則，行政上訴委員會認為該虛假的選民登記表所載的上訴人個人資料基本上並非不正確，而選舉事務處是有機制讓選民修改任何不正確的資料。登記通知書清楚列明上訴人可於2015年8月25日或之前通知選舉事務處，修改其個人資料，而且選民登記表亦列明提供虛假、不正確或誤導性的資料屬於犯罪。行政上訴委員會同意私隱專員的調查結果，認為選舉事務處已採取合理地切實可行的步驟，確保資料的準確性及／或防止冒充他人遞交虛假選民登記表的身份欺詐行為。

In respect of DPP2(1), the AAB considered that the personal data of the Appellant stated on the false voter registration form was basically not incorrect, and the REO had a mechanism to enable voters to amend any incorrect data. It was stated clearly in the Notice of Registration that the Appellant could amend his personal data by notifying the Electoral Registration Officer on or before 25 August 2015, and the voter registration form also stated that it was an offence to provide false, incorrect or misleading information. The AAB agreed with the Commissioner's finding that the REO had already taken reasonably practicable steps to ensure the accuracy of the data and to prevent identity fraud in submitting a false voter registration.

行政上訴委員會認為選舉事務處在正式選民登記冊保留上訴人的個人資料，並沒有違反保障資料第2(2)原則，因為上訴人是在其個人資料被納入臨時選民登記冊後才向選舉事務處作出投訴。選舉登記主任是不能修改或刪除選民登記冊上的資料，除非是根據有關的法律規定及訂明時限把上訴人的姓名及地址放入取消登記名單，或得到審裁官的批准，才可以這樣做。

The AAB took the view that the REO had not contravened DPP2(2) in respect of its retention of the Appellant's personal data on the final register of voters. On the ground that the Appellant only lodged his complaint to the REO after the Appellant's personal data had been included in the provisional register of voters. The Electoral Registration Officer had no power to amend or delete entries in the register of voters unless in accordance with the relevant legal requirements and prescribed time frame to put the Appellant's name and address in the omission lists, or with the approval of the Revising Officer.

行政上訴委員會同意私隱專員的觀點，認為必須在個人資料私隱權與個人的投票權之間作出平衡，兩者都是重要的權利。行政上訴委員會認為選舉事務處的申報制度建基於選民的誠信是沒有違反條例的規定，因為條例沒有限制收集個人資料的形式或方式。

The AAB agreed with the Commissioner's view that a balance must be struck between the personal data privacy rights and the right to vote of individuals, both of which were important rights. The AAB considered that REO's declaration system based on honesty of voters did not contravene the requirements of the Ordinance as there was no restriction on the format or means regarding the collection of personal data under the Ordinance.

行政上訴委員會對上訴人表示同情，但認為選舉事務處必須依從登記或刪除選民的法定規定，不能因一個電話查詢或私隱專員的一封信而刪除登記。由於選舉事務處已將上訴人的投訴轉介警方調查，行政上訴委員會認為私隱專員就個案繼續進行調查，亦不能帶來更滿意的結果。行政上訴委員會亦要求選舉事務處把本個案通知政制及內地事務局，以供日後檢討選民登記制度時考慮。

The AAB was sympathetic with the Appellant but took the view that REO had to follow the statutory requirements to register or remove a voter and it would not be permissible to remove a registration in response to a telephone enquiry or a letter from the Commissioner. As the REO had already referred the Appellant's complaint to the police for investigation, the AAB agreed that further investigation by the Commissioner would not bring about a more satisfactory result. The AAB also requested the REO to inform the Constitutional and Mainland Affairs Bureau about this case for consideration in the review of the voter registration system in future.

行政上訴委員會駁回上訴。

The AAB dismissed the appeal.

上訴人親身應訊

The Appellant acting in person

黃靜思律師
代表答辯人（香港個人資料私隱專員）

Miss Joyce Wong, Legal Counsel
for the Respondent (Privacy Commissioner for Personal Data, Hong Kong)

Ms Yau Pui-yee
代表受到遭上訴所反對的決定所約束的人（選舉事務處）

Ms Yau Pui-yee
for the party bound by the decision appealed against (Registration and Electoral Office)

上訴個案簡述四（行政上訴委員會上訴案件第 13/2016號）

為調查滲水問題而拍攝露台的相片 —— 不屬業主的個人資料 —— 只顯示拖鞋、擱架及無法識別的物品的影像 —— 從有關影像不能識別出單位的業主 —— 單是住址可構成上訴人的個人資料 —— 其身份可從土地註冊處確定

聆訊委員會成員：廖文健先生（副主席）
劉貴顯先生（委員）
凌浩雲先生（委員）

裁決日期：2016年10月4日

投訴內容

上訴人投訴其屋苑的經理沒有事先通知上訴人而進入其住宅，拍攝14張相片（主要顯示住宅的露台），及再向樓下住戶披露該些相片和他的姓名及住址。

私隱專員的決定

私隱專員認為上訴人所指的事宜沒有涉及其個人資料，因為單憑該些相片及該住址不能確定上訴人的身份，而且上訴人不能提供足夠資料，證明該經理曾向樓下住戶披露其姓名。私隱專員總結認為上訴人所指的事宜並不符合條例第37條「投訴」的規定[3]，因而決定不進行調查。

上訴

行政上訴委員會首先處理的問題是，私隱專員根據條例第37(1)條而決定拒絕調

[3] 第37條：(1) 任何個人或代表個人的任何有關人士可就符合以下說明的作為或行為向專員作出投訴 (a) 在該項投訴中指明的；及 (b) 是 (i) 已經或正在（視屬何情況而定）由在該項投訴中指明的資料使用者作出或從事的；(ii) 關乎該名個人的個人資料的，而該人是或（如在有關個案中該資料使用者倚賴在第8部下的豁免）可能是有關的資料當事人；及 (iii) 可能屬違反本條例（包括第28(4)條）下的規定的。

APPEAL CASE NOTE FOUR (AAB APPEAL NO.13/2016)

Photos of the balcony of a residence taken for the purpose of investigating water seepage problem – not personal data of the owner – showing only images such as slippers, rack and unidentifiable objects – owner of the flat not identifiable from the images – residential address alone constituted the Appellant's personal data – his identity could be ascertained from the Land Registry

Coram : Mr Liu Man Kin (Presiding Chairman)
Mr Lau Kwai Hin (Member)
Mr Ling Ho Wan (Member)

Date of Decision : 4 October 2016

The Complaint

The Appellant lodged a complaint against the estate manager of his residence who had, without giving prior notification to the Appellant, entered his flat and taken 14 photos showing mainly the balcony thereof and disclosed those photos together with the Appellant's name and residential address to the resident of the flat on the floor below the Appellant's.

The Commissioner's Decision

The Commissioner found that the matters reported by the Appellant did not involve his personal data because the identity of the Appellant could not be ascertained from the photos and the residential address only, and that the Appellant had failed to provide sufficient information to show that the manager had disclosed his name to the resident of the flat below. The Commissioner concluded that the matters reported by the Appellant did not qualify as a "complaint" under section 37 of the Ordinance[3] and decided not to carry out an investigation.

The Appeal

The AAB first dealt with the question of whether the Commissioner was correct to base his decision upon section 37(1) of the Ordinance

[3] Section 37: (1) An individual, or a relevant person on behalf of an individual, may make a complaint to the Commissioner about an act or practice (a) specified in the complaint; and (b) that (i) has been done or engaged in, or is being done or engaged in, as the case may be, by a data user specified in the complaint; (ii) relates to personal data of which the individual is or, in any case in which the data user is relying upon an exemption under Part 8, may be, the data subject; and (iii) may be a contravention of a requirement under this Ordinance (including section 28(4)).

查個案是否正確。行政上訴委員會表示在決定投訴是否符合第37(1)(b)條的規定(即所指的作為或行為是否由「資料使用者」作出、關於「個人資料」及可能違反條例)時,必須從最高程度(即假設投訴中所有指稱屬實)審視投訴所指的作為或行為,以決定個案是否符合條例第37(1)(b)條的準則。如答案是「否」,即沒有「投訴」,私隱專員便沒有東西要調查。如答案是「是」,即投訴人已向私隱專員作出「投訴」。投訴人之後須舉證以證明他有表面證據。如投訴人無法這樣做,私隱專員有權依據條例第39(2)(d)條拒絕對該投訴進行調查。

to refuse to investigate the case. The AAB stated that in determining whether a complaint met the requirements set out in section 37(1)(b), namely, whether the act or practice specified therein was done by a "data user", relating to "personal data", and contravened the Ordinance, one would have to look at the act or practice specified in the complaint by taking the complainant's case at its highest (i.e., assuming all the allegations in the complaint were true) in order to determine whether there was a case meeting the criteria in section 37(1)(b). If the answer was "No", no "complaint" had been made and the Commissioner would have nothing to investigate. If the answer was "Yes", the complainant had made a "complaint" to the Commissioner. The complainant then had to adduce evidence to show that he had prima facie evidence, and if the complainant was unable to do so, the Commissioner would be entitled to refuse to carry out an investigation of the complaint pursuant to section 39(2)(d) of the Ordinance.

行政上訴委員會同意私隱專員的觀點,認為該些相片不構成「個人資料」,因為從該些相片不能識別上訴人的身份。拍攝該些相片的目的是調查滲水問題,所拍攝的影像只是拖鞋、擱架及無法識別的物品。沒有相片顯示上訴人的外貌。行政上訴委員會認為即使從最高程度審視上訴人的個案,上訴人的投訴並不關乎「個人資料」,條例第37(1)(b)(ii)條的規定是不符合。因此沒有條例第37條所指的「投訴」。

The AAB agreed with the Commissioner that the photos did not constitute "personal data" as the Appellant could not be identified from the photos. The photos were taken for the purpose of investigating the water seepage problem and only captured images such as slippers, rack and unidentifiable objects. None of the photos showed the appearance of the Appellant. The AAB considered that even taking the Appellant's case at its highest, the Appellant's complaint did not relate to "personal data", and the requirements in section 37(1)(b)(ii) of the Ordinance would not be satisfied. Hence, there was no complaint as defined in section 37 of the Ordinance in respect of the alleged personal data in the photographs.

關於住址,行政上訴委員會認為在本個案的情況中,單是住址已構成「個人資料」,因為透過土地查冊,從住址可直接或間接地確定業主的身份。不過,由於沒有證據顯示屋苑的經理曾披露上訴人的住址或姓名予樓下住戶,私隱專員不進行調查是正確的,但依據的條文應是條例第39(2)(d)條而不是第37(1)條。

With regard to the residential address, the AAB was of the view that the residential address alone would constitute "personal data" in the context of this case, as the owner's identity could be ascertained directly or indirectly through the residential address by conducting a land search. However, as there was no evidence to show that the estate manager had disclosed the Appellent's address or his name to the resident of the lower flat, the Commissioner was correct in not carrying out an investigation but the basis to do so should have been section 39(2)(d) instead of section 37(1) of the Ordinance.

行政上訴委員會駁回上訴。

The AAB dismissed the appeal.

上訴人親身應訊

The Appellant acting in person

黃靜思律師
代表答辯人(香港個人資料私隱專員)

Miss Joyce Wong, Legal Counsel
for the Respondent (Privacy Commissioner for Personal Data, Hong Kong)

公署就公眾諮詢所提交的意見書

本年私穩專員就以下公眾諮詢提交保障個人資料私穩的意見：

SUBMISSIONS MADE IN RESPECT OF PUBLIC CONSULTATIONS

During the report period, the Commissioner provided advice on personal data privacy protection in response to the following public consultations:

徵詢意見的部門 Consulting Organisation	諮詢文件 Consultation Paper
勞工處 Labour Department	《職業介紹所實務守則》草擬本 Draft Code of Practice for Employment Agencies
財經事務及庫務局 Financial Services and the Treasury Bureau	提升香港公司的實益擁有權的透明度 Enhancing Transparency of Beneficial Ownership of Hong Kong Companies

意見書的詳細內容可瀏覽公署網頁。

For detail submissions, please refer to the PCPD website.

公署對建議中的法例及行政措施所作的評論

本年度私隱專員就以下的立法建議和行政措施建議提出意見：

COMMENTS MADE ON PROPOSED LEGISLATION AND ADMINISTRATIVE MEASURES

During the year, the Commissioner 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
土木工程拓展署 Civil Engineering and Development Department	多連接自由流動隧道收費系統對私隱影響評估及私隱合規性審計概念證明研究的諮詢服務 Consultancy Services for Privacy Impact Assessment and Privacy Compliance Audit for Proof of Concept Study for Multi-Link Free Flow Toll Collection System
商務及經濟發展局 Commerce and Economic Development Bureau	設立旅遊業監管局取代現時旅遊業界自我規管機制的立法建議 Proposed legislation for the establishment of a Travel Industry Authority in place of the existing self-regulatory regime for the tourism sector
發展局 Development Bureau	建造業付款保障條例 —— 法律草擬指示 Security of Payment Legislation for the Construction Industry – Drafting Instructions
選舉管理委員會 Electoral Affairs Commission	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 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	《交通銀行（香港）有限公司（合併）條例》的草稿 Draft provisions of Bank of Communications (Hong Kong) Limited (Merger) Bill
海事處 Marine Department	大型海上活動的安全措施的立法建議 Legislative Proposal on Safety Measures during Major Events at Sea
證券及期貨事務監察委員會 Securities and Futures Commission	推出投資者識別機制的建議 Proposed implementation of investor identification regime
保安局 Security Bureau	就實體貨幣及不記名可轉讓票據跨境流動建立申報制度 Establishment of a Reporting System on the Cross-boundary Movement of Physical Currency and Bearer Negotiable Instruments
運輸及房屋局 Transport and Housing Bureau	推出採用專營權模式運作的優質的士計劃的建議 Proposed implementation of premium taxi scheme under a franchise model

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12宗新的法律協助申請，全部曾在事前向公署作出投訴。

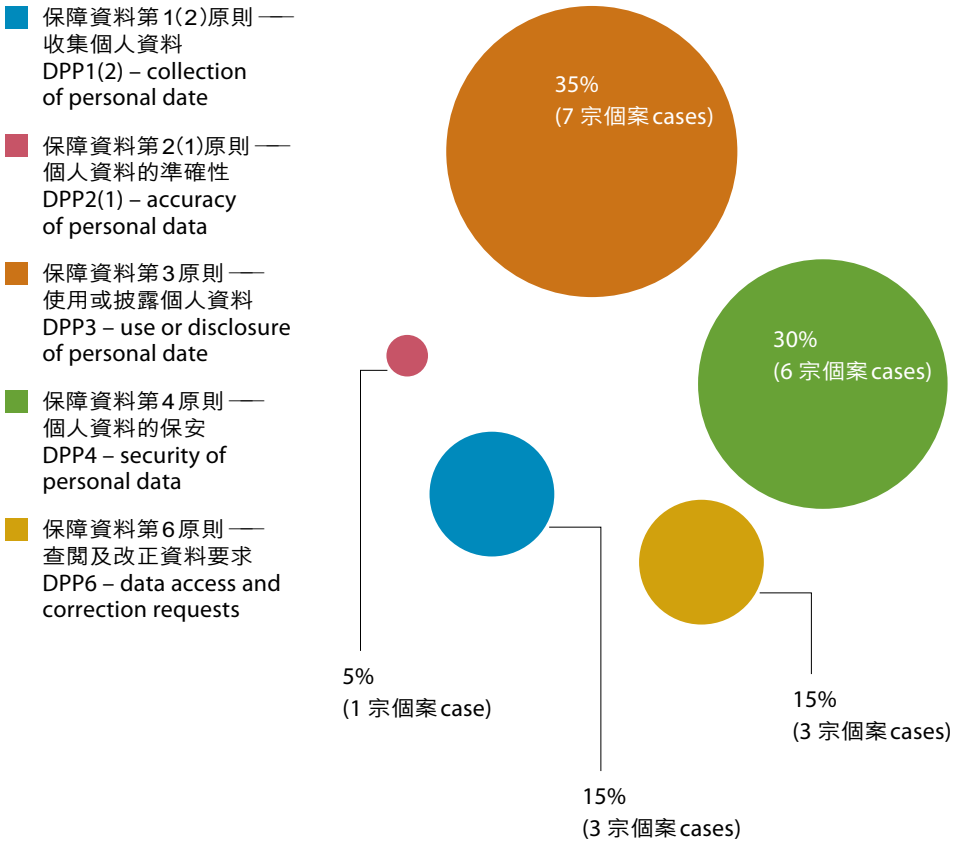
這些申請涉及下述違規指稱：(i)使用或披露個人資料；(ii)個人資料的保安；(iii)查閱及改正資料要求；(iv)收集個人資料；及(v)個人資料的準確性。

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 12 legal assistance applications, all of which were preceded by complaints lodged with the PCPD.

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

違規指控的性質
Nature of alleged contraventions



註：一宗個案可牽涉多於一項保障資料原則

N.B.: One case may involve a contravention of more than one DPP.

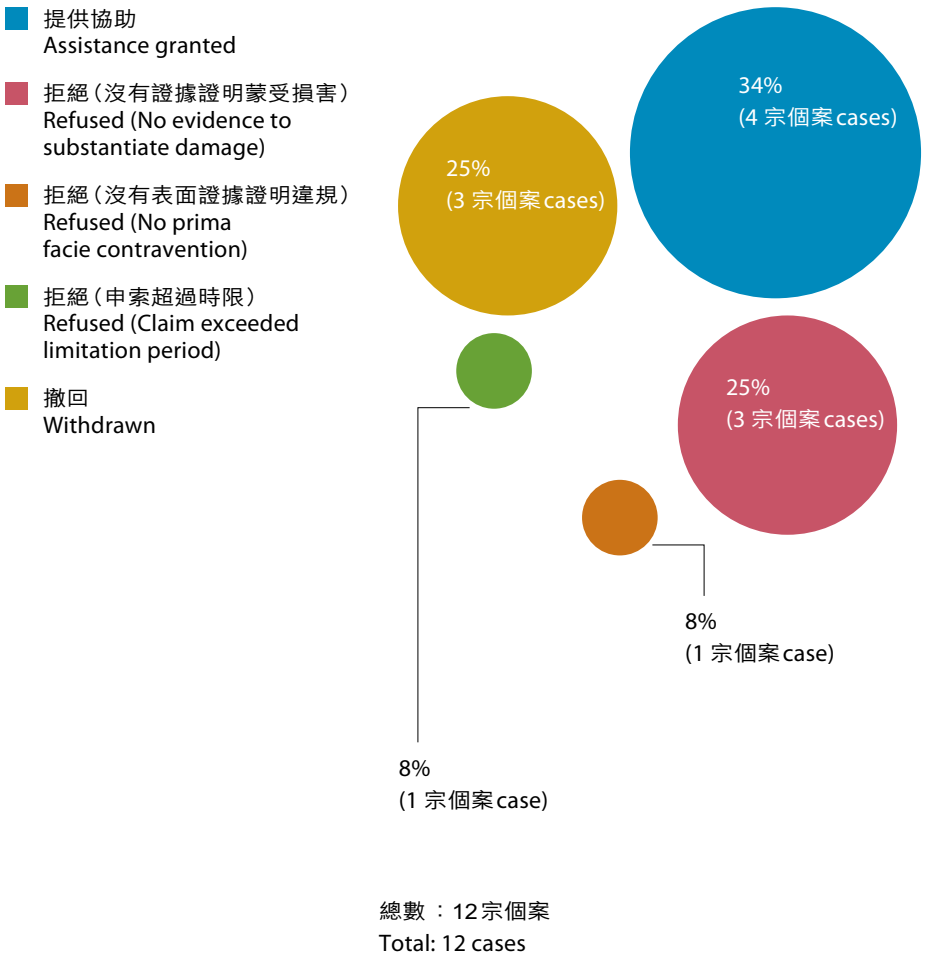
本年度內公署處理了14宗申請（包括去年未完成的兩宗）。在這些申請中，已完成的申請有12宗，其餘兩宗申請在年結時仍在考慮中。

在已完成的12宗個案中，四宗獲給予法律協助、三宗由申請人撤回、五宗被拒。下圖顯示法律協助申請的結果。申請被拒的主要原因包括沒有表面證據證明違反條例，及未能舉出證據證明蒙受損害。在五宗被拒個案中，公署接獲兩個覆核要求，現正處理中。

During the report year, the PCPD handled 14 applications (including two brought down from last year). Of these applications, 12 applications were completed and two applications were still under consideration as at the end of the report period.

Of the 12 cases completed, four were granted legal assistance, three were withdrawn by the applicants, and five were refused. The figure 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. Of the five cases refused, the PCPD received two requests for review which were underway.

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



總數：12宗個案
Total: 12 cases

首宗法律協助個案的判決（DCCJ 846/2016）

案情

受助人是一名未成年人。法律程序是由該未成年人的母親作為訴訟代理人提起的。

有關申索是關於一間補習社向無關的人士不當披露對該未成年人就未繳付的補習費所進行的小額錢債審裁處法律程序（「法律程序」）。雙方就補習中心所提供的補習教材及補習地點發生爭議。該補習中心除把法律程序文件發送至該未成年人的住址及學校地址，同時亦把有關文件的副本分別發送予該未成年人的校長及班主任，該兩人與案件並無關連。其後，有關法律程序的所有文件均是以同樣方式發送。在整個法律程序中，該未成年人被老師召喚去收取經校長及班主任送遞的文件。

私隱事宜及結果

該補習中心原本收集該未成年人的各項個人資料（包括就讀學校、成績、班別、住址及聯絡電話號碼），以分析其資歷，然後向他提供合適的補習服務。如此向該未成年人的校長及班主任披露該未成年人在法律程序中的個人資料，並不是與收集有關資料的原本目的直接有關，因而違反保障資料第3原則。此事對該未成年人造成騷擾及壓力。私隱專員向該未成年人提供法律協助，就他蒙受的損害（包括感情的傷害）提出申索補償。在2016年6月10日的缺席判決中，該補習中心被判敗訴，賠償額有待評估。

第二宗法律協助個案透過和解獲得賠償

公署成功協助一名受助人透過和解獲得三萬港元的賠償，補償因資料使用者違反條例保障資料第4原則的規定而蒙受的損害（包括感情的傷害）。受助人是一宗人身傷害案件的潛在申索人。被告人代表律師向受助人的僱主發信索取受助人的僱用資料，包括薪金資料，並在信中提及其人身傷害案件的索償資料。該律師行未有遵從保障資料第4原則，採取適當步驟確保信內的個人資料不受未獲准許的披露，導致受助人的同事知悉事件及相關的個人資料，令受助人感到困擾。

JUDGMENT ENTERED FOR THE FIRST LEGAL ASSISTANCE CASE (DCCJ 846/2016)

Facts of the case

The assisted person was a teenager, who claimed for damages against a tutorial centre in respect of the latter's improper disclosure of his personal data. The teenager's mother was appointed as his next friend in this claim.

The improper disclosure of the teenager's personal data arose from a Small Claim Tribunal proceedings ("the Proceedings"), in which the tutorial centre sued the teenager for unpaid tuition fees. The parties argued over the tuition materials and the location where the tutorial lessons were provided. In addition to sending the Proceedings documents to the teenager at his residential and school addresses, copies of the same documents were also addressed and sent to the teenager's headmaster and head teacher in school, who were unrelated to the Proceedings. All subsequent documents relating to the Proceedings were similarly sent to both the teenager and those unrelated parties, and the teenager was called upon by his teacher to collect the documents which were sent throughout the Proceedings.

Privacy Issues and Outcome

Various pieces of personal data of the teenager, including his school, grade, class, residential address, and contact phone number, were collected by the tutorial centre originally for the purposes of analysing his credentials and providing the appropriate tutorial services to him. When the teenager's personal data in the documents of the Proceedings was disclosed to the headmaster and the head teacher, such disclosure did not directly relate to the original purpose of collecting such data by the tutorial center and thus constituted a contravention of DPP3. As this contravention had caused disturbance and stress to the teenager, the Commissioner provided legal assistance to him for claiming compensation in respect of the damage he suffered, including injury to his feelings. On 10 June 2016, default judgment was entered against the tutorial centre with damages to be assessed.

COMPENSATION OBTAINED BY WAY OF SETTLEMENT IN THE SECOND LEGAL ASSISTANCE CASE

The PCPD has successfully assisted an applicant to obtain compensation by way of settlement in the amount of HK$30,000 in damages (including his injury to feelings) as a result of the contravention of the requirements under the DPP4 of the Ordinance. The assisted person was a potential claimant in a personal injury case. The law firm (acting for the prospective defendant in the personal injury case) sent a letter to the assisted person's employer requesting for his employment details including the income, and also mentioned about the details of his personal injury claim. In breach of DPP4, the law firm failed to take adequate measures to protect the assisted person's personal data (as contained in the said letter) against unauthorised disclosure to his colleague causing distress to the assisted person.