

ENFORCING DATA PROTECTION

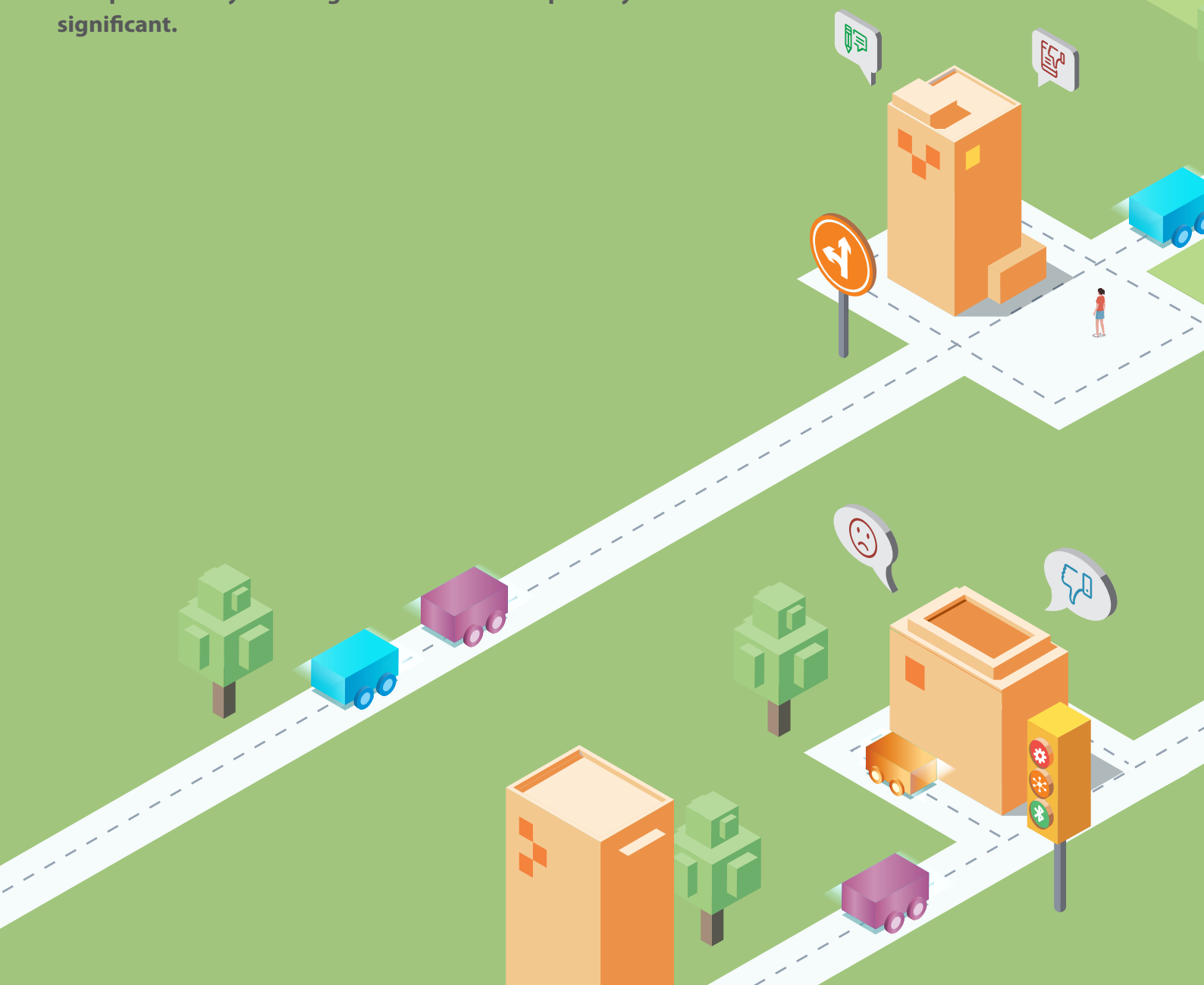
執法保障資料

調查不偏不倚

對於市民的投訴及查詢，公署具效率、公平公正地調查及排解。若發現有重大私隱風險的情況存在，我們主動作出調查。

THOROUGH AND IMPARTIAL INVESTIGATIONS

The PCPD investigates and resolves complaints and enquiries effectively in a manner that is fair to all parties concerned, and proactively investigates areas where privacy risks are significant.



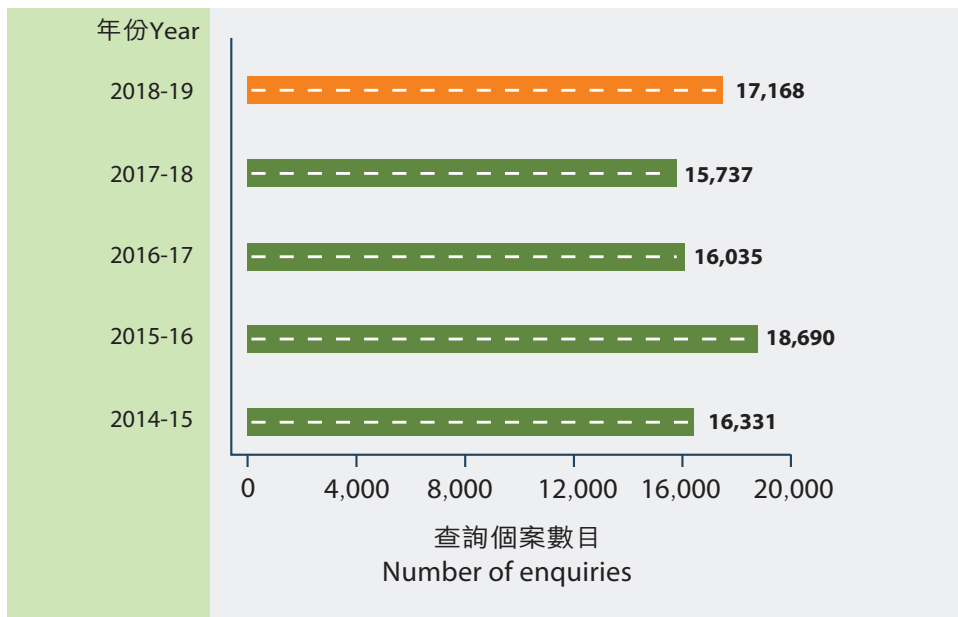


處理查詢

公署在報告年度共接獲 17,168 宗¹查詢個案，較 2017/18 年度的 15,737 宗上升 9%，平均每個工作天處理 70 宗查詢。大部分查詢 (85%) 經由公署的查詢熱線 (2827 2827) 及中小型企業的專屬諮詢熱線 (2110 1155) 提出。至於查詢的主要性質，32% 是關於收集及使用個人資料 (例如香港身份證號碼及副本)、10% 是與僱傭事宜相關；6% 是與查閱及改正資料要求相關。

報告年度發生多宗大規模的資料外洩事故，與資料外洩事故相關的查詢數字亦由 2017/18 年度的 146 宗上升至 259 宗。此外，歐盟的《通用數據保障條例》於 2018 年 5 月生效，相關的查詢由 2017/18 年度的 12 宗上升至報告年度的 252 宗。以上種種提高大眾對個人資料私隱的關注，促使查詢個案數字回升。

圖 5.1 – 查詢個案數目



HANDLING ENQUIRIES

During the reporting year, the PCPD received a total of 17,168 enquiries¹, which represented an increase of 9% as compared with 15,737 enquiries in 2017/18. On average, 70 enquiries were handled per working day. The majority of the enquiries (85%) were made through the PCPD hotline (2827 2827) and the designated hotline for small and medium enterprises (2110 1155). The enquiries were mainly related to the collection and use of personal data (e.g. Hong Kong Identity Card numbers or copies) (32%), employment (10%), and data access and correction request (6%).

A number of large-scale data breach incidents happened during the reporting year, and the number of enquiries related to data breach incidents increased from 146 cases in 2017/18 to 259 cases in the reporting year. In addition, the European Union General Data Protection Regulation came into effect in May 2018, and the number of related enquiries received increased from 12 cases in 2017/18 to 252 cases in the reporting year. All of the above has heightened public concern about personal data privacy, which in turn contributed to the rise of number of enquiries.

Figure 5.1 – Number of enquiries received

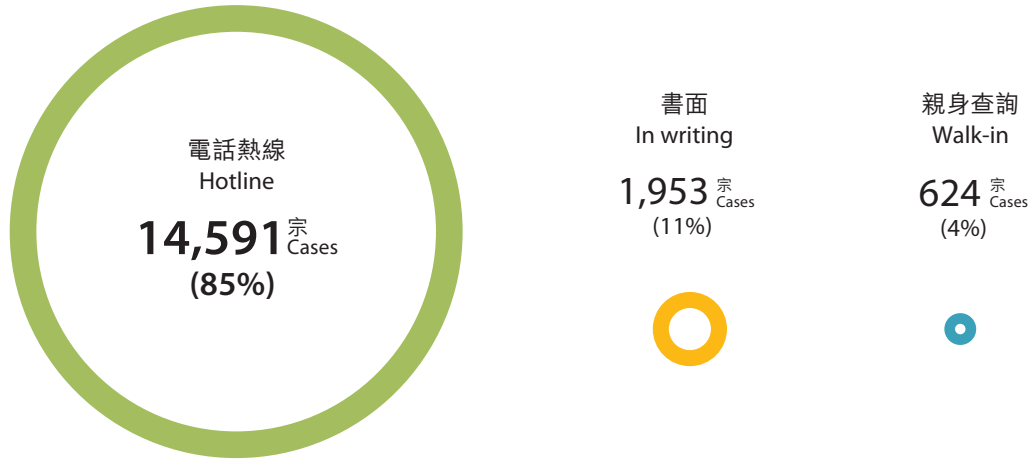
¹ 一宗查詢可能涉及多項性質。

¹ An enquiry may cut across different categories.



圖 5.2 – 提出查詢的途徑

Figure 5.2 – Means by which enquiries were made



總數：17,168 宗
Total: 17,168 Cases

調查投訴

投訴的整體趨勢

在本報告年度發生多宗資訊科技系統外洩個人資料的重大事故，引起了公眾對保障網上個人資料私隱的廣泛關注。在過去兩個報告年度(2016/17及2017/18年度)，公署接獲的投訴數字均下降，但在本報告年度的投訴數字回復上升。與資訊及通訊科技應用相關的投訴個案亦比上個報告年度更上升超過一倍，其中涉及在互聯網披露或洩漏個人資料的投訴大增，創近年新高。

另一方面，近年公署先採用調停方式解決爭議，嘗試排解資料當事人與被投訴者之間的糾紛，達88%的投訴成功調停。在處理投訴的過程中，公署致力讓投訴人對《私隱條例》所賦予的權利加深認識，並協助資料使用者履行其在《私隱條例》下的責任。

在私隱保障的新趨勢下，公署提倡公私營機構在依從監管要求的最低標準上，以尊重、互惠和公平等數據道德價值處理關於個人資料的實務。在處理投訴期間，公署除了提醒向被投訴者採取糾正措施外，還會根據個案情況作出建議(詳情見第66-79頁)，鼓勵資料使用者建立尊重個人資料的良好行事方式。

COMPLAINTS INVESTIGATION

Overall trend of complaints

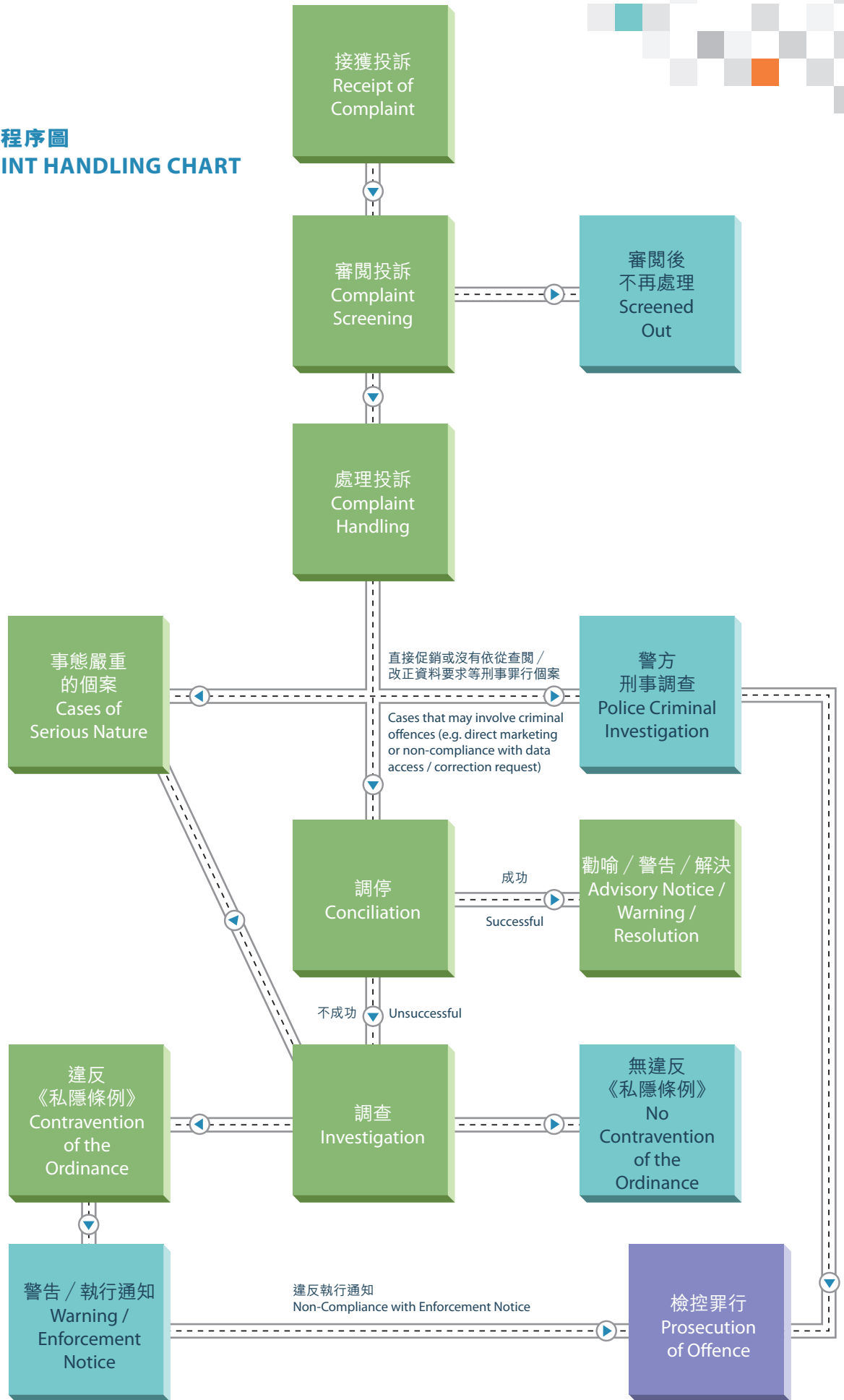
A number of major incidents related to the leakage of personal data from information technology systems happened during the reporting year, causing widespread public concern about protection of personal data privacy online. Despite the decrease in the number of complaints received by this office in the past two reporting years (2016/17 and 2017/18), the number of complaints in this reporting year has reverted to an uptrend. At the same time, the number of information technology-related complaints has also increased more than a double comparing with that of the last reporting year. The number of complaints involving disclosure or leakage of personal data on the Internet has increased significantly, reaching a record high in recent years.

The PCPD has in recent years adopted conciliation as a means to resolve disputes between data subjects and the parties being complained against. 88% of the complaints received were successfully conciliated. In the course of handling complaints, this office is committed to enhancing complainants' understanding of their rights under the Ordinance and to assist data users in fulfilling their responsibilities under the Ordinance.

In the new trend of privacy protection, this office advocates public and private organisations to adopt, in addition to complying with the regulation, the values of data ethics advocated by the PCPD, namely "Respectful, Beneficial and Fair" when handling personal data in practice. In handling complaints, the PCPD does not only remind the parties being complained against to take remedial actions, but also makes recommendations to them according to the circumstances of the cases, so as to encourage the data users to establish a good practice of respecting personal data (please refer to P.66-79 for details).



處理投訴程序圖 COMPLAINT HANDLING CHART



接獲的投訴個案

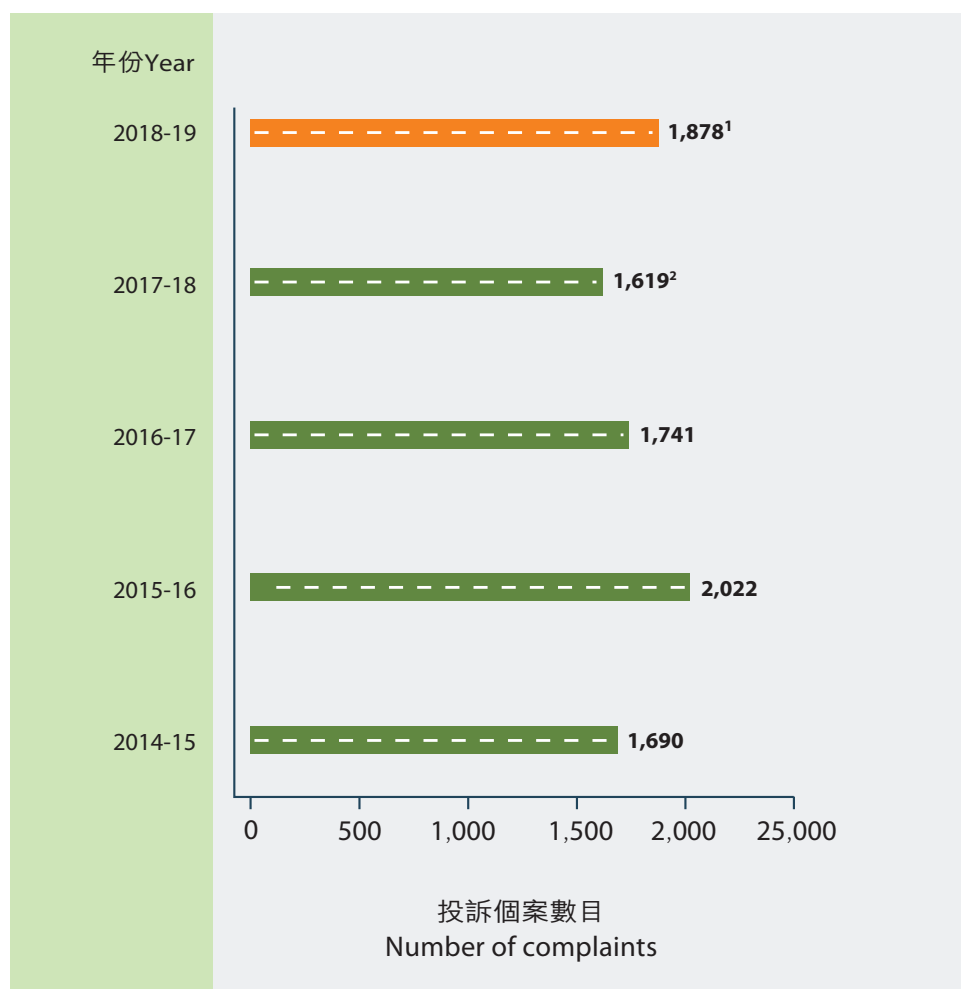
公署在本報告年度共接獲 1,878 宗¹有關個人資料私隱的投訴，比上年度增加 16%。(圖 5.3)

Complaints received

1,878 complaints¹ were received in 2018-19, being a 16% increase from last year. (Figure 5.3)

圖 5.3 – 投訴個案數目

Figure 5.3 – Number of complaints received



¹ 當中包括 143 宗有關國泰航空有限公司外洩客戶個人資料事件的投訴。

¹ 143 complaints were about Cathay Pacific Airways Limited data leakage incident.

² 為統計目的，公署在該報告年度收到有關選舉事務處遺失載有選民個人資料的手提電腦的 1,944 宗同類投訴，只作一宗投訴計算。

² For statistical purpose, the 1,944 complaints received in relation to the suspected theft of computers of the Registration and Electoral Office that contained personal data of registered electors were counted as one complaint.



被投訴者類別

在接獲的 1,878 宗投訴個案中，被投訴者可分為以下類別：

- 私營機構 (1,348 宗)，主要涉及：銀行及財務公司、物業管理公司，以及交通運輸公司；
- 個人 (305 宗)；及
- 政府部門及公共機構 (225 宗)，主要涉及：醫院或醫療機構、警務處，以及房屋管理機構。(圖 5.4)

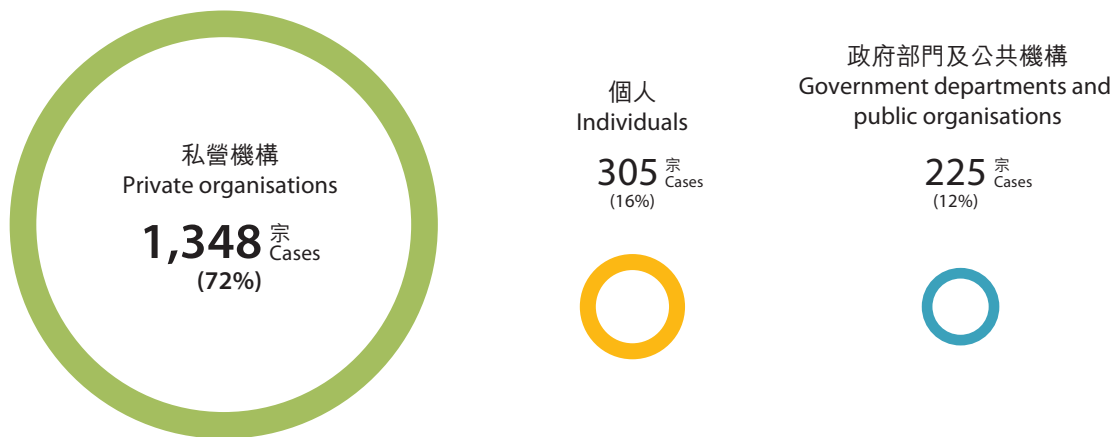
圖 5.4 – 被投訴者類別

Types of parties being complained against

Among the 1,878 complaints received, the types of parties being complained against are as follows:

- private organisations (1,348 cases), with the majority including banking and finance institutions, property management companies and transportation companies;
- individuals (305 cases); and
- government departments and public organisations (225 cases), with the majority including healthcare services institutions, the Hong Kong Police Force and housing organisations. (Figure 5.4)

Figure 5.4 – Types of parties being complained against

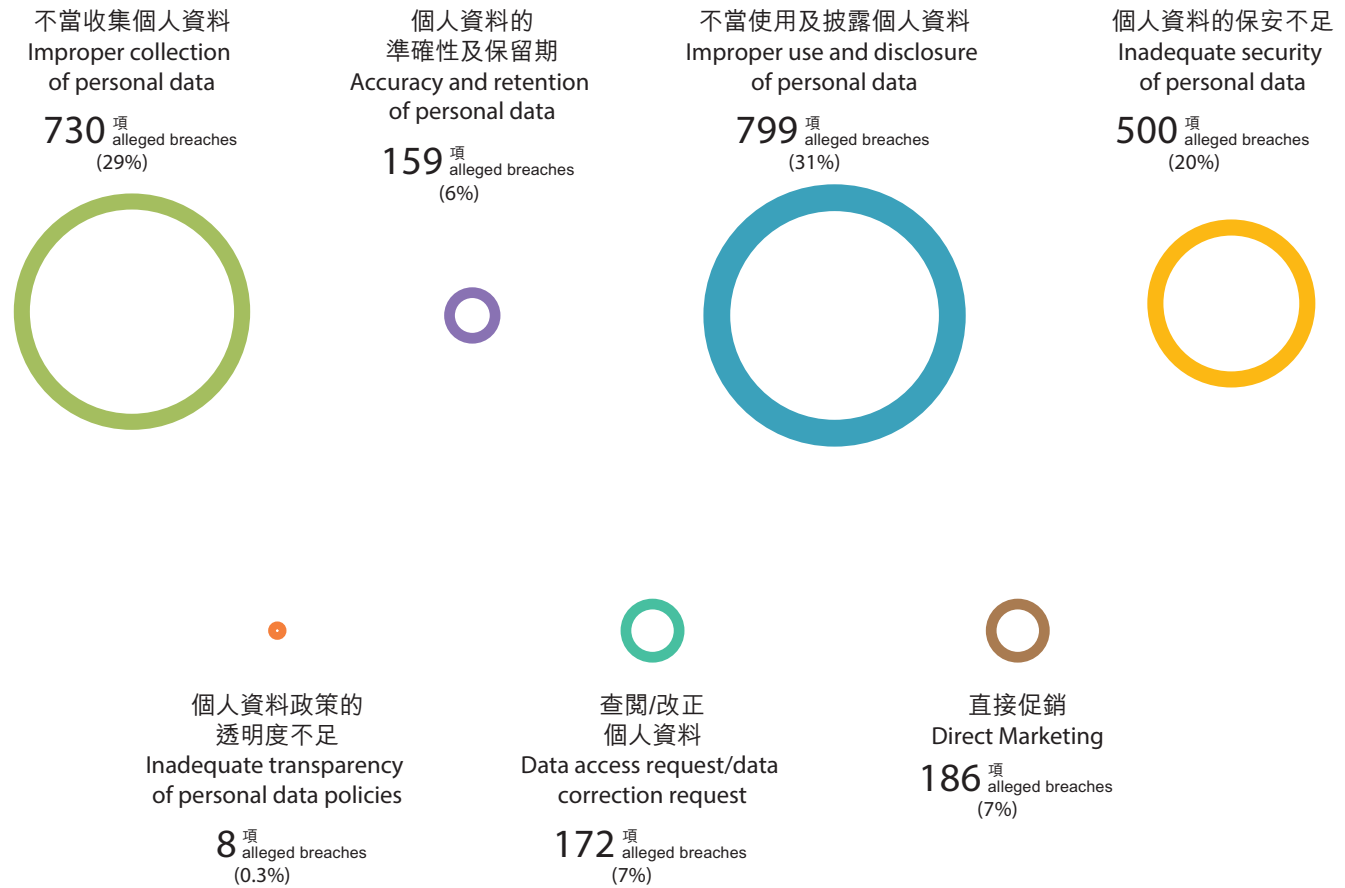


總數：
Total: **1,878** 宗 Cases

就違反《私隱條例》的投訴指稱

在本報告年度內接獲的 1,878 宗投訴中，共涉及 2,554 項違反《私隱條例》規定的指稱（同一宗投訴個案可涉及多於一項指稱），該些投訴指稱見圖 5.5。

圖 5.5 – 就違反《私隱條例》的投訴指稱



Nature of alleged breaches under the Ordinance

The 1,878 complaints involved a total of 2,554 alleged breaches under the Ordinance (one complaint case may have more than one allegation). The nature of the alleged breaches is shown in Figure 5.5.

Figure 5.5 – Nature of alleged breaches



投訴所涉的主要範疇

跟上一個報告年度比較，公署於本報告年度收到的投訴中，與資訊科技有關的投訴有明顯上升的趨勢，升幅達 102%。(圖 5.6)

有關資訊科技的投訴中，關於在互聯網上披露或洩漏個人資料的投訴宗數較上一個報告年度大幅上升超過三倍，相信與年內發生了多宗資訊科技系統外洩個人資料事故有關，而涉及社交網絡或智能手機應用程式的投訴，亦錄得顯著升幅。

除直接促銷外，其他主要範疇的個案均有上升趨勢，當中以涉及身份證號碼/副本的個案升幅最大，達 17%，主要與身份證號碼/副本的收集及其後的使用有關。其次是有關查閱/改正資料要求的個案，有 13% 的升幅，主要涉及未有依從查閱/改正資料要求。

Major subjects of complaints

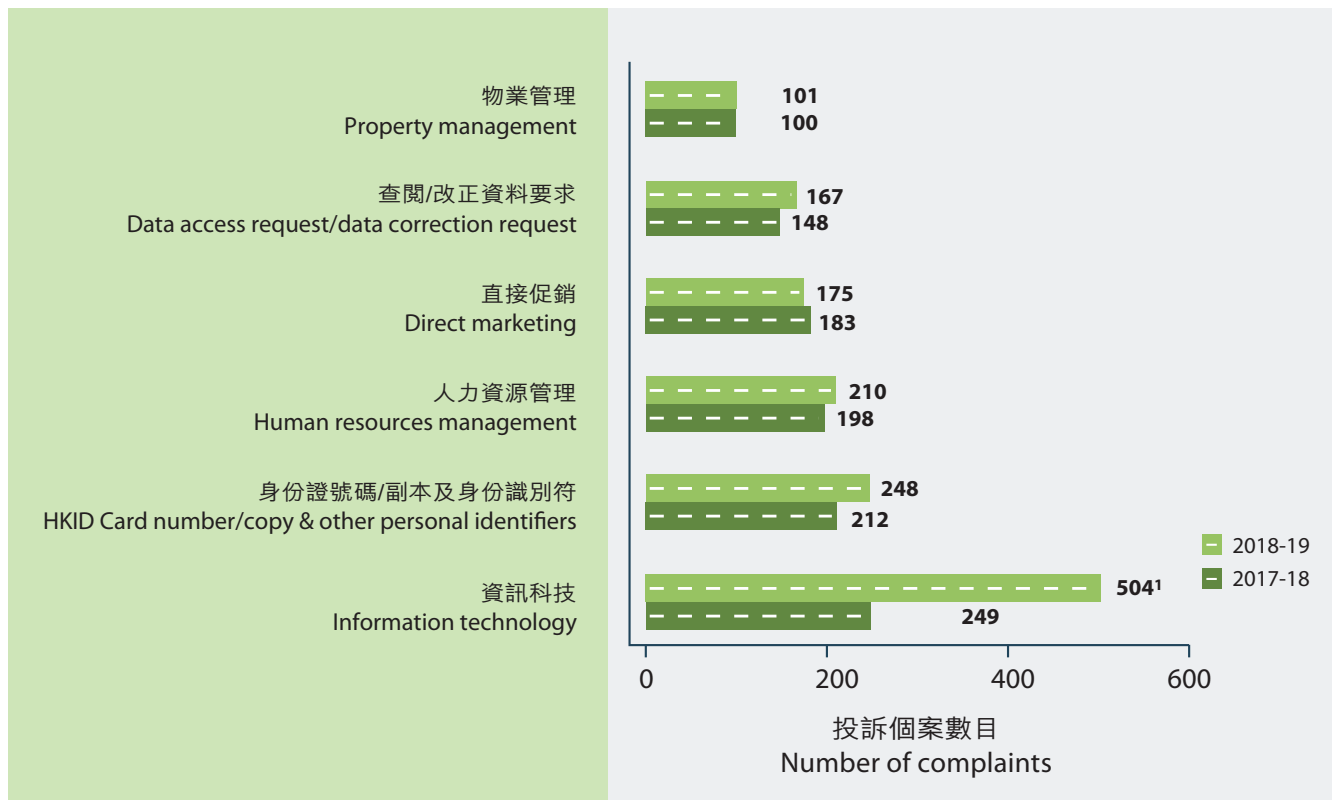
Compared with the last reporting year, the number of complaints received by the office in the reporting year relating to information technology has significantly increased by 102%. (Figure 5.6)

Among the complaints related to information technology, the number of complaints about the disclosure or leakage of personal data on the Internet has increased by more than three times compared with that in the previous reporting year. Understandably, that was a result of a number of major incidents of data breach related to information technology systems. The number of complaints involving social networking or smartphone applications has also recorded a significant increase.

Except for direct marketing, complaints in other major areas have shown an upward trend. Among them, the number of cases involving Hong Kong Identity Card (HKID) numbers/copies has increased the most, by 17%, mainly related to the collection of HKID numbers/copies and subsequent use. This is followed by a 13% increase in the number of cases related to data access/correction requests, which were mainly about non-compliance with the said requests.

圖 5.6 – 投訴所涉的主要範疇

Figure 5.6 – Major subjects of complaints



¹ 當中包括 143 宗有關國泰航空有限公司外洩客戶個人資料事件的投訴。

¹ 143 complaints were about Cathay Pacific Airways Limited data leakage incident.

年度投訴摘要

在本報告年度，公署處理了191宗承接上年度的投訴，加上新接獲的1,878宗投訴，年內共須處理2,069宗投訴。在這些個案中，1,777宗(86%)在本報告年度內經已完結，而餘下的292宗(14%)，截至2019年3月31日仍在處理中。(圖5.7)

圖 5.7 – 過去五個年度投訴摘要

	2018-19	2017-18	2016-17	2015-16	2014-15
承接上年度的投訴 Complaints carried forward	191	193	262	253	329
接獲的投訴 Complaints received	1,878	1,619	1,741	2,022	1,690
共須處理的投訴 Total complaints processed	2,069	1,812	2,003	2,275	2,019
已完結的投訴 Complaints completed	1,777	1,621	1,810	2,013	1,766
未完結的投訴 Complaints under processing	292	191	193	262	253

Summary of complaints handled during the reporting year

During the reporting year, the PCPD handled 1,878 newly received complaints, and 191 complaints carried forward from the last reporting year, bringing the total number of complaints handled during the reporting year to 2,069. Of these, 1,777 (86%) were completed during the year, and 292 (14%) were still in progress as at 31 March 2019. (Figure 5.7)

Figure 5.7 – Summary of complaints handled in the past five years



本年度已完結的投訴個案分類 (圖 5.8)

在本報告年度內已經完結的 1,777 宗投訴，當中 899 宗經公署初步審研後，基於以下原因結案：

- (i) 個案不符合《私隱條例》第 37 條定義的「投訴」，例如不涉及「個人資料」。部分個案則未能指明被投訴者的身份或匿名投訴等；
- (ii) 投訴人撤回投訴；
- (iii) 公署要求投訴人加以述明其指稱或提供補充資料後，投訴人未有作出回應；
- (iv) 投訴內容不在《私隱條例》的管轄範圍；或
- (v) 沒有違反《私隱條例》的表面證據。

其餘 878 宗個案獲公署接納作更深入處理。

圖 5.8 – 本年度已完結的投訴個案分類

Categorisation of completed complaints (Figure 5.8)

Of the 1,777 complaints completed during the reporting year, 899 were concluded after our preliminary assessment, on the grounds set out below:

- (i) the matters complained of fell outside the definition of “complaint” under section 37 of the Ordinance. For instance, the matters complained of did not involve “personal data”. In some cases, the complainants failed to specify the identities of the parties being complained against or the complaints were anonymous etc.;
- (ii) the complaints were withdrawn by the complainants;
- (iii) the complainants did not respond to the PCPD’s requests to provide evidence in support of their allegations;
- (iv) the matters complained of were outside the jurisdiction of the Ordinance; or
- (v) no prima facie evidence of contravention.

The remaining 878 complaints were accepted for further handling.

Figure 5.8 – Categorisation of completed complaints



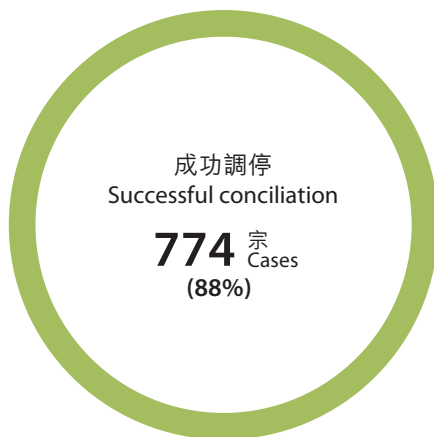
公署處理投訴的方式

就該 878 宗獲公署接納作更深入處理的投訴，公署先以調停這種較便捷的方式，嘗試解決資料當事人與被投訴者之間的糾紛。當中達 88% 經公署介入後得到解決(圖 5.9)，並基於以下原因結案：

- (i) 被投訴者就投訴事項採取相應的糾正措施；
- (ii) 公署向投訴人分析所有在案資料後，投訴人不再追究；或
- (iii) 公署應投訴人要求向被投訴者表達關注，以讓被投訴者作出跟進。

此外，公署在調停期間，發現六宗投訴涉及刑事成份(全都是有關直接促銷的條文)，在公署確立表面證據成立後，投訴人同意轉介個案予警方進一步處理。

圖 5.9 – 調停、轉介警方與展開調查的投訴個案



展開調查
Investigation

98 宗 Cases
(11%)



轉介警方作
刑事調查
Referral to the Police for
criminal investigation

6 宗 Cases
(1%)



Modes of complaints handling

For those 878 complaints accepted for further handling, the PCPD attempted to resolve disputes between the data subjects and the parties being complained against by conciliation as a speedy and convenient alternative. 774 complaints (88%) were successfully resolved (Figure 5.9) on the following grounds:

- (i) remedial actions have been taken by the parties being complained against to resolve the problems raised by the complainants;
- (ii) the complainants withdrew their complaints after the PCPD had explained the information in hand to them; or
- (iii) the PCPD had conveyed the complainants' concerns to the parties being complained against for their follow-up actions.

In the course of conciliation, six complaints were found involving criminal elements (all of them were direct marketing-related cases). Those complaints were referred to the Police when prima facie evidence of contravention was established and the complainants' consent for referral was obtained.

Figure 5.9 – Complaints resolved by conciliation, referral to the Police and investigation



餘下 98 宗的投訴因不適合或不能成功調停，而須展開調查，當中：

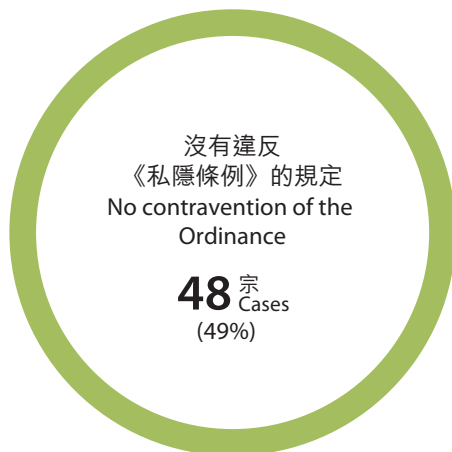
- 公署要求 50 宗的被投訴者採取符合《私隱條例》規定的相應糾正措施，公署並向部份被投訴者發出警告。
- 餘下的 48 宗的被投訴者沒有違反《私隱條例》的規定，公署給予部份被投訴者建議，鼓勵他們建立保障個人資料的良好行事方式。(圖 5.10)

Investigations were carried out for the remaining 98 complaints, which were unsuitable for conciliation or cannot be conciliated:

- in 50 complaints, the PCPD had urged the parties being complained against to take remedial actions in order to comply with the requirements of the Ordinance. Some of them were issued with warnings by the PCPD.
- no contravention of the Ordinance was found in the remaining 48 complaints. Recommendations were given to some of the parties being complained against to encourage them to establish good practice in data protection. (Figure 5.10)

圖 5.10 – 展開調查的個案結果分類

Figure 5.10 – Categorisation of investigation cases



公署給予被投訴者的建議

公署除了向涉及違反《私隱條例》的被投訴者發出警告或執行通知外，在調停或調查的過程中亦會視乎情況提示或建議被投訴者採取糾正措施，以免重蹈覆轍，或鼓勵他們建立保障個人資料的良好行事方式。在本報告年度中，公署曾向被投訴者作出超過1,400項建議，要求他們：

- 遵從《私隱條例》的相關規定；
- 修訂與個人資料有關的政策和行事程序，以免再發生同類違規事件；
- 向職員發出指引，要求他們遵從有關的政策和行事程序；
- 依從投訴人的查閱／改正資料要求，提供／改正個人資料，或減低依從查閱資料要求的費用；
- 刪除不必要地收集或向第三者披露的個人資料；
- 承諾停止被投訴的不當行為；
- 依從投訴人的拒絕接收直銷訊息要求；及
- 跟進公署轉達投訴人對其私隱的關注。

Recommendations given to the parties being complained against

Apart from issuing Enforcement Notices and warnings, the PCPD also, in some cases, advises the parties being complained against to carry out remedial actions in the course of conciliation or investigation, with a view to preventing the recurrence of similar irregularities in future, and/or encourage them to establish good practices in personal data protection. During the reporting year, more than 1,400 recommendations were made to the parties being complained against to advise them to take the following actions:

- observe relevant requirements under the Ordinance;
- revise personal data-related policies and practices to prevent similar breach in future;
- provide proper guidance to staff to require compliance with relevant policies and practices;
- supply/correct personal data to comply with the complainants' data access/correction requests, or reduce the fee for complying with the data access requests;
- delete personal data that was collected or disclosed to third parties unnecessarily;
- undertake to cease the malpractices leading to the complaints;
- comply with opt-out requests for not receiving direct marketing messages; and
- follow up on privacy-related concern of the complainants.



個案選錄 · 以作借鑑

公司或機構在運用個人資料為業務或服務增值之餘，亦須有道德地顧及其作為對資料當事人所帶來的影響。以下選錄中的一些個案，說明個人資料私隱一旦被侵犯，對當事人的尊嚴、權利或利益可造成損害。

公署如認為投訴有理據，會建議涉事公司或機構作出糾正或補救。由資料當事人提出的投訴，可以令不當的處理個人資料方式得以修正，繼而惠及他人。公署希望個案選錄可供資料使用者作為借鑑，提升企業尊重個人資料的意識，在日常業務中實踐數據道德，而市民可了解其個人資料私隱的權利。

SUMMARIES OF SELECTED CASES • LESSONS LEARNT

Companies or organisations, when making use of personal data in enhancing businesses or services, are under ethical obligations to carefully consider the possible impact on the data subjects. These selected cases illustrate how intrusion of personal data privacy may infringe the data subjects' dignity, rights and interests.

If complaints are found to be substantiated, the PCPD would recommend the companies or organisations involved to take corrective or remedial actions. Complaints made by data subjects can bring about the correction of malpractices of personal data handling, and subsequently benefit the community at large. By publishing these case summaries, we wish to provide data users with good lessons to learn, raise the organisational awareness of respecting personal data and applying data ethics in daily businesses, and to enhance data subjects' understanding of their privacy rights.





個案一：收集超乎適度的個人資料作汽車保險報價用途 — 保障資料第1原則

投訴內容

投訴人有意透過一間車行購買汽車保險，遂向車行索取保險報價資料。車行要求投訴人填寫投保表格及提供身份證明文件，並解釋這是保險公司的規定。投訴人不滿車行及保險公司為報價目的而收集過多的個人資料。

車行向公署表示，作為保險中介人，他們一貫依照保險公司的指示向保險客戶收集資料。保險公司則向公署解釋，他們只要求索取初步報價的客戶，提供與受保汽車有關的基本資料。保險公司相信，事件源於作為中介人的車行，誤以為索取初步報價的要求，亦如同正式投保般處理。

結果

公署認為，投訴人純粹查詢報價而非正式投保，保險公司實在無需要求投訴人填寫投保表格及提供身份證明文件。雖然保險公司將事件歸咎於車行未有按既定政策行事，惟作為主事人，對於車行在本案中的行為，保險公司亦責無旁貸。

經公署介入後，保險公司承諾與車行加強溝通，並向車行職員提供定期培訓，確保車行職員清楚知悉保險公司的政策，並有效地處理報價查詢。另外，車行亦確認已向保險公司澄清有關政策，並獲保險公司提供書面指引，供處理報價查詢的前線職員遵從。

Case 1: Excessive collection of personal data for the purposes of preparing car insurance quotation – DPP1

The Complaint

The complainant intended to purchase a car insurance policy and sought a quotation via a car dealer. The complainant was requested by the car dealer to submit an insurance application form and his identification documents. The car dealer claimed that this was the requirement of the insurance company to provide a quotation. The complainant took the view that the car dealer and the insurance company had collected excessive personal data from him for the purposes of preparing a quotation.

The car dealer stated that being an intermediary, it always followed the company's instructions in collecting customers' personal data. The insurance company stated that only basic information of the vehicle was required for preparing a quotation. The insurance company believed that the car dealer had mistakenly handled a request for quotation as an application for insurance.

Outcome

The PCPD considered that for the purposes of providing an insurance policy quotation, it was unnecessary for the insurance company to obtain a completed application form and identification documents from the complainant. Although the insurance company attributed the incident to the car dealer's failure to adhere to its policy in handling a request for quotation, it did not extricate its liability (being the principal) in relation to the car dealer's acts in this case.

After the PCPD's intervention, the insurance company undertook to enhance its communications with the car dealer and provide regular training to its staff, so as to ensure that quotation enquiries were properly dealt with. The car dealer also confirmed that it had made clarification with the insurance company on the procedures for seeking quotations and the insurance company had provided written guidelines to its staff to follow.



借鑑

在商業世界，中介服務提供者擔任機構與客戶之間的橋樑，能促成交易及帶來商機。作為中介，往往需要代表機構處理客戶個人資料，假如中介在處理客戶個人資料時出錯，委託該中介執行有關工作的機構作為主事人，亦須對該中介的疏忽負上責任。

在本案中，保險公司明顯未有適時採取措施，向車行發出明確的資料收集指引，亦沒有有效監察指引的執行情況，以致車行過早向詢問報價的客戶收集個人資料，此舉並無必要。

所有委託中介代為處理客戶個人資料的機構，應以此案為鑑。機構應制訂完善的監察制度，確保中介在個人資料方面的行事方式，符合機構本身的私隱政策。否則，中介的疏忽或會間接影響機構經營多時的商譽。

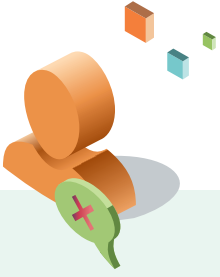
Lesson learnt

Intermediary services bring about business opportunities by bridging communications between companies and their clients. When an intermediary wrongfully handles customers' personal data, the company commissioning the intermediary is also held liable for the intermediary's negligence.

The insurance company in this case had obviously failed to take steps to issue clear personal data collection guidelines to the car dealer, or monitor its compliance with the guidelines. As a result, the car dealer collected personal data from potential clients seeking quotation information at a premature stage. Such collection of personal data was unnecessary.

Companies can take reference from this case as an example to establish an effective monitoring system, to ensure that their privacy policies are followed by the intermediaries commissioned. Otherwise, negligence of the intermediaries may indirectly damage the companies' hard earned reputation.





個案二：政府部門在未經投訴人同意下向警方披露投訴資料 – 保障資料第3原則

投訴內容

投訴人向某政府部門投訴一項舞獅活動涉嫌阻塞通道。其後，投訴人突然收到警方電話，欲跟進上述投訴。由於投訴事項不屬警方範疇，投訴人不滿該政府部門如此向警方披露其投訴資料，遂向公署作出投訴。

該政府部門向公署表示，當時其職員基於舉辦舞獅活動須向警方申請，遂決定將投訴人的投訴轉介警方。根據該政府部門事發時實施的指引，並無規定職員在轉介投訴予其他機構或政府部門前，必須徵求投訴人的同意。不過，該政府部門在事後已修訂上述指引，要求職員必須取得投訴人的同意後，方可向轉介部門提供當事人的個人資料。

結果

雖然該政府部門收到的投訴源於一項須向警方作出申請的舞獅活動，但明顯地投訴人的投訴事項是關乎涉嫌阻塞通道，而非關乎主辦者有否就此活動向警方作出申請。因此，公署認為，該政府部門在未得投訴人同意下，如此向警方披露他的個人資料，此舉涉及違反保障資料第3原則的規定。

因應本案，公署在完成調查後向該政府部門發出書面警告，要求該政府部門嚴加監察並確保其人員在處理個人資料時，必須按照既定政策行事，以保障市民的個人資料私隱。

Case 2: A government department disclosed complaint details to the Police without the complainant's consent – DPP3

The Complaint

The complainant made a complaint to a government department against an obstruction to an emergency vehicle access by a lion dance performance. After he made the complaint, he received a follow-up telephone call from the Police. As the matter he complained against was not under the Police's purview, the complainant was dissatisfied that the government department had disclosed his complaint details to the Police. He hence made a complaint to the PCPD.

According to the government department, having considered that a permit from the Police was required for holding a lion dance performance, the handling officer decided to refer the case to the Police. The government department also revealed that its standing policy did not mandate officers to obtain consent from the complainant before making a referral. After this incident, the government department had revised its policy so that no referral would be made unless the complainant's consent has been obtained.

Outcome

It was obvious that the complainant's concern was about the obstruction caused by the lion dance performance, not about whether the performance organiser had obtained a permit from the Police. In such case, the PCPD considered that the government department had contravened DPP3 by disclosing the complainant's personal data to the Police without his consent.

The PCPD served a written warning on the government department after the investigation of this case. It was requested to closely monitor staff compliance with its policy in handling personal data, so as to protect the personal data privacy of citizens.



借鑑

政府部門在處理投訴時，如發現可能涉及非其管轄範圍的違法行為，實有責任向相關部門作出通報。負責職員在通報時，應按實際情況考慮，視乎需要決定是否必須向轉介部門提供投訴人的身份資料，而非機械式地將所有資料自動披露予轉介部門。

此外，不論公共或私營機構亦應注意，空有保障個人資料的政策並不足夠，清楚訂明執行上的權責及分工，讓職員有所遵循，亦同樣重要。否則的話，私隱政策便會淪為紙上談兵。

Lesson learnt

When handling complaints, if government departments note any suspected breach of legal requirements which are beyond their purview, they have an obligation to report the matters to the appropriate authority. In doing so, the officer concerned should ascertain the need to disclose the complainant's identity to the other party by taking into account the actual circumstances, instead of making indiscriminate disclosure of the information to the latter.

Private and public organisations alike, it is insufficient to merely establish a privacy policy without supplementing it with an execution plan. It is equally important to clearly define the role and responsibilities of relevant officers for their compliance in the privacy policy. Otherwise, the privacy policy will only be empty talk.





個案三：透過查閱資料要求以找尋資料作訴訟用途 – 保障資料第6原則

投訴內容

投訴人為保險公司的經紀。事緣該保險公司早前曾向投訴人發出一封警告信，當中指根據投訴人上司向該公司提供的錄影片段，投訴人曾承認數項導致公司遭受重大損失的過錯。在發出警告信後不久，該保險公司終止與該名經紀之間的服务合約。

投訴人隨後向該保險公司遞交一份查閱資料要求表格，以查閱警告信中所提及的錄影片段。投訴人書面向該保險公司表示，她索取該片段的目的是為了追討該保險公司不合法及不當地終止她的服務合約，而令她蒙受的損害。

該保險公司最終以謄本的形式，向投訴人提供該片段內有關她的個人資料。投訴人不滿該保險公司沒有以原本的影像格式向她提供有關的錄影片段，遂向公署投訴該保險公司未有依從其查閱資料要求。

結果

在司法覆核個案胡潔冰訴行政上訴委員會（法院案件編號HCAL 60/2007）中，法官表示《私隱條例》的原意為保障個人資料私隱，提供渠道以供資料當事人查閱資料使用者持有他的個人資料，以及在發現不準確時要求資料使用者作出更正。法庭裁決中亦指出，《私隱條例》賦予資料當事人查閱資料的權利不可濫用，亦不得用以替代或取代其他適當途徑以補充法律程序中的文件透露權，亦不是為找尋資料作訴訟用途。

Case 3: Requested copy of personal data for litigation purpose – DPP6

The Complaint

The complainant was an agent of an insurance company. The company had issued a warning letter to the complainant, mentioning that according to a video recording submitted by her supervisors, she had admitted several wrongdoings that had caused serious damage to the company. Shortly after the issuance of the warning letter, the company terminated the complainant's service contract.

The complainant therefore submitted a data access request to the company, requesting a copy of her personal data contained in the video recording. The complainant also stated that her purpose of obtaining the video recording was to pursue her claim against the company for the wrongful and unlawful termination of her service contract and for all damage suffered.

The Company agreed to comply with the data access request in the form of a transcript. As the complainant stated that she would only accept a copy of the video recording in a video format, she made a complaint to this office.

Outcome

In the judicial review case of Wu Kit Ping v. Administrative Appeals Board HCAL 60/2007, the Judge held that the purpose of the Ordinance is to protect the privacy of an individual, and to enable an individual to check on and if necessary rectify, data held by a data user. In accordance with the court judgment, the data access right conferred upon a data subject under the Ordinance should not be abused nor should it be exercised to substitute or replace other proper channels for discovery of documents.



此外，行政上訴委員會在上訴案件第 10/2013 號中，同意公署指個案中的上訴人明顯是希望透過查閱資料要求去搜集有關他控告相關資料使用者的證據，認同公署持充份理據指個案中的主要事項與個人資料私隱無關，而根據《私隱條例》第 39(2)(ca) 條不繼續處理其投訴。

本個案明顯源於投訴人與該保險公司之間的僱傭糾紛。公署認為，投訴人利用查閱資料要求的機制補充或替代法律程序中的文件披露權，希望取得該片段從而找尋資料作訴訟用途，就她被該保險公司終止服務合約一事作出追討。在考慮上述司法覆核及行政上訴委員會案件中的裁決後，公署認為該保險公司以謄本的形式依從投訴人的查閱資料要求，已符合《私隱條例》下的相關規定，亦已彰顯《私隱條例》下賦予資料當事人查閱資料權的立法原意。

借鑑

《私隱條例》賦予市民查閱資料的重要權利，而資料使用者亦須按法例規定妥善處理市民的相關要求。然而，市民經常誤會《私隱條例》下賦予他們有關權利的用意，以為這權利可用作補充或取代法律程序中的文件披露權利。事實上，查閱資料的權利在於讓個人知悉某資料使用者是否持有他的個人資料，以及索取一份該資料的複本，並在認為他的個人資料不準確時，有權向資料使用者提出改正資料要求。故此，市民不應期望可以透過行使查閱資料權利以找尋資料作訴訟用途，亦不應利用此權利解決他與資料使用者之間的糾紛。

Besides, in the case of Administrative Appeal No. 10/2013, the Administrative Appeal Board agreed that the appellant was clearly attempting to gather evidence to substantiate his case against the data user by making the data access request in question, and the PCPD was fully justified and had rightly relied on section 39(2)(ca) of the Ordinance to not pursue the case further of which the primary subject matter of the complaint was not about personal data privacy.

This complaint obviously stemmed from an employment dispute between the complainant and the company. The PCPD was of the view that the complainant was using the mechanism of data access requests to supplement or as replacement for the rights of discovery in legal proceedings arising from an employment dispute between the company and her. In this regard, the PCPD considered that the provision of the transcript was sufficient for the compliance with the data access request under the Ordinance, and to manifest the complainant's personal data privacy right.

Lesson learnt

The Ordinance provides an important right to members of the public to access their personal data, and the data user is obligated to handle data access requests in accordance with the Ordinance. However, individuals often misunderstand the right given to them under the Ordinance, and use it to supplement or as replacement for the rights of discovery in legal proceedings. In fact, the legislative intent of data access request is to provide a channel to a data subject to access his or her personal data held by a data user, and to request correction when an inaccuracy is noted. Individuals should not expect to obtain information for litigation purpose or resolve their disputes with the data user by using the mechanism of data access request.



個案四：保險公司發信至客戶已報稱失效的地址 – 保障資料第 2(1) 原則

投訴內容

投訴人是某保險公司的客戶。投訴人不滿該保險公司在收到其更改地址要求後，仍發信至他已報稱失效的地址以確認其更改地址要求。

結果

該保險公司向公署解釋，該公司在收到客戶更改地址要求後，將確認更改地址要求的信件分別發送至客戶新及舊的地址屬其一貫做法，目的是防止詐騙，以免客戶在不知情下被第三者更改資料。

經公署介入後，該保險公司已修訂上述做法，確認日後在收到客戶更改地址要求後，會以短訊或其他除舊地址以外的聯絡方法向客戶確認其更改地址要求，以取代現時發信至舊地址的做法。此外，該保險公司亦承諾不會再發信至投訴人的舊地址。

借鑑

在本案中，保險公司為了保障客戶，希望對其更改地址要求作出確認，出發點本是良好。然而，將載有客戶個人資料的信件寄往客戶已表明失效的地址，實在有一定風險，亦不符合客戶的合理期望。

今時今日，客戶大多會提供手機號碼、電郵地址等聯絡方法，發信至舊地址已非保險公司向客戶確認其更改地址要求的唯一方法。如保險公司繼續蕭規曹隨，未能與時並進，善用科技保障客戶的個人資料，將難以贏取客戶的信任。

資料使用者應定時審視其保障個人資料的現有措施，在處理個人資料的過程中，應同時從企業及客戶的角度，考慮是否有其他能更有效地保障個人資料，亦同時符合《私隱條例》的做法，以制訂切合時宜的保障個人資料方案。

Case 4: An insurance company issued a letter to an invalid address reported by the customer – DPP2(1)

The Complaint

The complainant was a customer of an insurance company. He was dissatisfied that after he had made a change of address request to the company, the insurance company still issued a letter to his invalid address to confirm the said request.

Outcome

The insurance company stated that it was its usual practice to confirm customers' change of address requests by sending letters to both the new and former addresses. Such practice was designed for fraud prevention, and avoiding change of address requests being made by third parties without the knowledge of the customers.

After the PCPD's intervention, the insurance company revised its practice. Whenever it received address update requests, instead of using the former addresses, the insurance company would contact the customers by other means, such as SMS to confirm the requests. Besides, the insurance company undertook not to issue letter to the complainant's former address.

Lesson learnt

For protection of customers' personal data, the insurance company took steps to confirm address update requests. The initiative was well intended. However, sending letters containing personal data to invalid addresses entailed certain security risks. The act also fell short of the customers' privacy expectation.

Nowadays, it is common for customers to provide mobile numbers and email addresses for contact purpose. Sending letters to former addresses is no longer the only means by which insurance companies can confirm address update requests with customers. If insurance companies simply follow past practices, and fail to adapt to change of times by adopting technology to facilitate data protection, it would be difficult for them to gain the customers' trust.

Data users should regularly review their personal data protection measures. When handling personal data, organisations should take into account the perspectives of themselves and the customers, explore alternative measures that can better protect personal data as well as comply with the requirements under the Ordinance, so as to develop data protection mechanisms that cater to today's needs.



個案五：信貸資料機構未有按《私隱條例》處理更改資料要求，並且將無關的資料納入個人信貸報告中 — 《私隱條例》第 23、25 條及保障資料第 2(1) 原則

投訴內容

投訴人為一名律師，他被委託擔任一名破產人士的受託人。該名破產人士為一宗民事索償案件的被告。

投訴人其後發現信貸資料機構在其個人信貸報告中，錯誤地記錄他為上述索償案件的被告。投訴人遂根據《私隱條例》向信貸資料機構提出更改資料要求，並向信貸資料機構提供該案件的誓章副本以證明他並非案中的被告，而是被告的受託人。

然而，信貸資料機構其後沒有從投訴人的信貸報告中，刪除有關該索償案件的資料，只按投訴人提供的誓章內容，更新了該索償案件的進度。投訴人遂向公署投訴該信貸資料機構。

結果

信貸資料機構未能向公署解釋，為何投訴人身為受託人（而非被告）一事，與他的個人信貸有關。公署認為，信貸資料機構未有確保投訴人的個人信貸報告準確，違反《私隱條例》的保障資料第 2(1) 原則。經公署介入，信貸資料機構最終從投訴人的個人信貸報告中，刪除有關該索償案件的資料，並向投訴人提供更正的報告。信貸資料機構同時修訂相關措施，確保日後不會將破產人士的訴訟資料，記錄於受託人的個人信貸報告中。

Case 5: A credit reference agency had not handled a data correction request in line with the requirements of the Ordinance, and recorded irrelevant information in a credit report – section 23, section 25 and DPP 2(1).

The Complaint

The complainant was a lawyer. He was appointed as a trustee of a bankruptcy order. The person subject to the order was a defendant of a civil lawsuit.

The complainant discovered that a credit reference agency had erroneously recorded him as the defendant of the civil lawsuit in his credit report. The complainant thereby made a data correction request to the credit reference agency seeking rectification. To support his data correction request, the complainant provided the credit reference agency with the affirmation of the lawsuit illustrating that he was not the defendant of the case but the trustee instead.

The credit reference agency, however, did not remove the lawsuit from the complainant's credit record. It only updated the status of the lawsuit with reference to the affirmation provided by the complainant. The complainant then made a complaint to this office against the credit reference agency.

Outcome

The credit reference agency failed to explain to the PCPD how the fact that being a trustee (as opposed to being a defendant in a lawsuit) was related to the complainant's personal credit reference. The PCPD was of the view that the credit reference agency had failed to ensure the accuracy of the complainant's credit report, in breach of Data Protection Principle 2(1). Following the PCPD's intervention, the credit reference agency eventually removed the lawsuit from the complainant's credit report, and furnished the complainant with the corrected report. The credit reference agency also revised its measures to ensure that court cases relating bankruptcy orders would not be recorded in the credit reports of the trustees of the orders.

資料使用者在依從更改資料要求時，須根據《私隱條例》第23條向要求者提供經改正的個人資料複本。若涉事資料在資料使用者依從改正資料要求當日之前的12個月內曾被披露予第三者，資料使用者須向該第三者提供經改正的個人資料複本。假如資料使用者拒絕更改資料要求，資料使用者則須按《私隱條例》第25條，以書面回覆要求者，述明拒絕依從的理由。在本案中，該信貸資料機構並沒有根據《私隱條例》的上述規定，回應投訴人提出的更改資料要求。

因應本案的結果，公署向信貸資料機構發警告信，要求該機構務必緊遵《私隱條例》的規定，確保個人信貸資料的準確性，以及正確處理更改資料要求。

借鑑

根據公署依據《私隱條例》第12條發出的《個人信貸資料實務守則》，信貸資料機構可從公眾記錄中（例如法庭資料和破產記錄）收集個人資料，並將有關資料收錄在個人信貸報告中。不過，信貸資料機構有責任確保所收錄的資料是與該人的個人信貸有關。公署認為，假如信貸資料機構稍加審視傳訊令狀的內容，理應知悉投訴人並非案件的被告，便可避免本案的發生。

在數據推動的經濟下，客戶的個人資料已轉化成經營及推展企業業務的珍貴資產。信貸資料機構坐擁龐大的客戶資料庫，應恪守更高的道德標準，在符合《私隱條例》的同時，亦符合持份者的期望，以尊重、互惠和公平的方式使用客戶的個人資料。

When handling a data correction request, the data user should provide the requestor with a copy of the corrected data in accordance with section 23 of the Ordinance. If the data in dispute had been disclosed to a third party within 12 months before the receipt of the data access request, the data user should also forward the corrected data to the third party. If the data user decides to refuse a data correction request, the data user should notify the requestor the refusal as well as the reason(s) of the refusal in writing as required by section 25 of the Ordinance. In the present case, the credit reference agency failed to handle the complainant's data correction request in accordance with the above requirements of the Ordinance.

In view of the findings of this complaint, the PCPD served a warning letter on the credit reference agency, urging it to comply with the Ordinance in ensuring the accuracy of personal credit data and proper handling of data correction request.

Lesson learnt

According to the Code of Practice on Consumer Credit Data issued by PCPD by virtue of section 12 of the Ordinance, a credit reference agency may collect personal data from public domain (such as court case and bankruptcy record) and include the data in the credit report. Notwithstanding that, a credit reference agency is required to ensure that the data recorded in a credit report relates to one's personal credit. In our opinion, this complaint could have been avoided. If the credit reference agency had examined the writ of summon with due care, it would have noted that the complainant was not the defendant of the case.

In the data-driven economy, customer data has transformed to valuable asset for business operation and promotion. Credit reference agencies, holding a database with enormous customer data, should adhere to higher ethical standards. Apart from complying with the requirements under the Ordinance, credit reference agencies should also aim to meet the stakeholders' expectation, and use customers' personal data in a respectful, mutually beneficial and fair manner.



個案六：試用智能產品後應緊記刪除資料 – 保障資料第 4 原則

投訴內容

投訴人曾於某智能電話零售公司的分店，試用一部智能電話，期間曾在該電話上短暫登入其雲端儲存戶口。數月後，投訴人收到一位不認識的人士的來電，該人士表示在他的雲端儲存戶口中，發現投訴人的雲端儲存戶口的資料。投訴人擔心有關雲端儲存服務存在保安漏洞，遂向公署作出投訴。

結果

公署經查詢後得悉，雖然投訴人在試用該電話後已登出其雲端儲存戶口，但她在離開分店前沒有在該電話上刪除登入期間已同步（即自動由投訴人的雲端儲存戶口下載）至該電話的資料。

該人士其後曾於上述分店試用該電話，期間同樣曾登入其雲端儲存戶口，遺留在該電話內的屬於投訴人的資料，便因而被同步至該人士的雲端儲存戶口。

公署認為，本案並非涉事的雲端儲存服務存在漏洞，而是源於投訴人以該電話登入其雲端儲存服務時，沒有顧及該戶口及該電話之間會進行資料同步，有關資料便因而被遺留於該電話內。

Case 6: Advisable to delete data after trying out smart products – DPP4

The Complaint

The complainant tried out a smart phone at a telecommunications company. During the tryout, she logged into her Cloud storage account on a trial phone for a short period of time. A few months later, the complainant received a call from an unknown person, telling her that he was able to access her personal data in her Cloud storage account via such account of his. The complainant was worried about the security vulnerabilities of the relevant Cloud storage service, and hence made a complaint to the PCPD.

Outcome

Our investigation revealed that although the complainant had logged out of her Cloud storage account after trying out the smart phone, she did not delete the data synchronised to the trial phone (i.e. the data which had been automatically downloaded from the complainant's Cloud storage to the trial phone after she had logged into her Cloud storage account) before logging out.

At a later time, the unknown person visited the same store and tried out the same trial phone. During the tryout, he had also used the trial phone to log into his Cloud storage account. As a result, the complainant's data which had been synchronised to the trial phone earlier, was then synchronised to the person's Cloud storage account.

The PCPD considered that this incident was not caused by any security vulnerabilities in the Cloud storage service, but the complainant's ignorance of the data synchronisation between her Cloud storage account and the trial phone.

公署遂向該公司發信，建議該公司透過張貼告示等方法，提醒客戶試用器材時避免使用自己的網上服務戶口，以及離開前應確保試用期間被下載至有關器材的資料已被刪除。

借鑑

在數碼產品推陳出新的年代，市民在試用智能電話、平板電腦及電腦等器材時，應小心考慮在該等裝置上登入其網上服務（特別是網上理財、電郵、雲端儲存、網上購物、社交網站及相簿等）會帶來的私隱風險，並應在完成試用後徹底檢查及刪除所有使用期間被下載至有關器材的資料，以免留下數碼足跡，令私隱無所遁形。

The PCPD had therefore sent a letter to the company, suggesting it to remind its customers (by posting notices or otherwise) not to use their online service accounts when trying out devices, and to ensure that data downloaded to the relevant device is deleted before leaving company.

Lesson learnt

When trying or borrowing devices like smart phones, tablets and computers, users should be mindful of the privacy risks associated with using the devices to log into their own online services accounts (in particular accounts concerning online banking, email, Cloud storage, online shopping, social networking sites and photo albums, etc.). Customers are also reminded to delete all data downloaded to the trial devices during tryout to prevent leaving any digital footprints.



個案七：旅行社不應向所有旅行團員分發航班行程表(包含所有旅行團員的姓名和電子機票號碼) – 保障資料第4原則

投訴內容

投訴人參加了某旅行社舉辦的旅行團。在出發當天，旅行團的領隊向所有團友分發了一個航班行程清單。該清單包含所有團友的全名、電子機票號碼和預訂參考號碼。由於以該些資料登入相關航空公司的網站後，便可查閱得到有關乘客的出生日期、國籍、護照號碼和護照有效期，故該旅行團的所有團友均能透過行程清單上的該些資料得知彼此的上述個人資料。

結果

旅行社承認該名領隊如此分發該行程清單是不必要的，亦同意此舉可能會增加個人資料外洩的風險。在公署介入事件後，該旅行社已提醒其職員不可向團友分發任何類似本個案的清單。旅行社亦已書面通知涉案的團友，他們的個人資料在本案中可能外洩的情況。專員向旅行社發出警告。

借鑑

大部分航空公司允許乘客以他們的姓名和預訂參考號碼/電子機票號碼登入其網站，以管理他們的預訂航班，當中普遍涉及乘客在確認機位時已輸入的個人資料，如護照號碼、護照有效期和出生日期等頗為敏感的個人資料。在這情況下，乘客的姓名和預訂參考號碼/電子機票號碼便等同成為了讀取乘客個人資料的鑰匙，一經無關的第三者登入，乘客的個人資料便如取如攜。

公署認為，即使領隊需要團友核實個人資料，或有航班資訊要通知團友，亦不應貪圖一時便捷，隨便地將該航班行程清單分發予所有團友。領隊肩負照顧團友的責任，那應包括保障他們的個人資料。

Case 7: Travel agency should not distribute flight itinerary list (containing all tour members' names and e-ticket numbers) to all tour members – DPP4

The Complaint

The complainant joined a group tour of a travel agency. On the date of departure, the tour guide distributed a flight itinerary to all members of the tour group. The list contained all group members' full names, e-ticket numbers and booking reference numbers. Such information could be used for checking passengers' date of birth, nationality, passport number and passport expiry date by logging into the relevant airline's website. In other words, the group members were able to access the personal data of each other.

Outcome

The travel agency admitted that the distribution of the flight itinerary was unnecessary, and it might give rise to possible risk of personal data leakage. After PCPD's intervention, the travel agency had reminded its staff members not to distribute any similar list to tour group members. The travel agency also wrote to inform all members of the tour group concerned regarding the possible leakage of their personal data in the present case. The PCPD issued a warning to the travel agency.

Lesson learnt

Most airlines allow passengers to login to airline websites using the passengers' names and booking reference numbers/e-ticket numbers for managing flight bookings. During the flight confirmation process, passengers are able to access their personal data, including sensitive personal data such as nationalities, passport numbers, passport expiry dates and dates of birth. In this circumstances, passengers' names, booking references/e-ticket numbers are practically keys to unlock passengers' personal data maintained by airlines. If these keys are exposed to third parties, passengers' personal data would be subjected to risks of unrestricted access.

The PCPD considered that even though tour guides might need to verify personal data with tour group members, or to inform them of flight information, they should not take the short cut by including information of all tour members on the same list and distribute it to all members. Tour guides have a duty to look after tour group members, and protecting members' personal data is also part of that duty.



個案八：機構不公平收集求職者的個人資料 – 保障資料第 1 原則

投訴內容

投訴人根據求職廣告的資料，向 A 公司郵寄了他的履歷，申請秘書一職。當他出席面試時，負責面試的職員游說他填寫另一份應徵 B 公司營業員職位的申請表格。投訴人認為，A 公司以招聘秘書為幌子，實質上是為 B 公司招聘營業員，因此他向公署投訴 B 公司。

結果

公署調查所得資料顯示，有關面試不單於 B 公司的物業內進行，並由 B 公司的職員主持，介紹內容亦是營業員的工作範圍，與秘書一職無關。

《私隱條例》的保障資料第 1(2) 原則訂明，個人資料須以合法及在有關個案的所有情況下屬公平的方法收集。

公署介入後，B 公司已對該負責面試的職員發出書面警告，並確認他已銷毀有關個人資料。此外，B 公司亦採取糾正措施，提醒職員在刊登招聘廣告時必須讓求職者清楚識別該公司的身份及招聘職位。

公署已就上述投訴向 B 公司發出書面警告，要求該公司必須採取措施，確保職員不會透過誤導的方式招聘營業員，以緊遵《私隱條例》的相關規定。

Case 8: A company unfairly collected a job applicant's personal data – DPP1

The Complaint

According to the information given in a recruitment advertisement, the complainant applied to Company A for a clerical post. However, when the complainant attended the selection interview, the interviewer persuaded him to fill in an application form for a sales position of Company B. The complainant considered that Company A used the recruitment for clerk as a pretext for recruiting sales representative by Company B. He therefore made a complaint to this office.

Outcome

As revealed in the investigation, the selection interview was conducted in the office of Company B by a sales agent of Company B. Job descriptions given in the interview were related to the sales vacancy of Company B, not the clerical post of Company A.

DPP 1(2) under the Ordinance requires a data user to collect personal data by lawful and fair means.

After the PCPD's intervention, Company B issued a written warning to its staff member conducting the selection interview, and confirmed that he had destroyed the relevant personal data. In addition, Company B also reminded its staff to clearly state the vacancy to be filled and Company B's identity as the employer when posting job advertisements.

Consequently, the PCPD issued a warning letter to Company B, urging it to take practicable measures to ensure that its staff would not recruit sales agent through misleading means, so as to strictly comply with the requirements of the Ordinance.



借鑑

求職者是根據招聘廣告的資訊提供個人資料，自然預期自己的個人資料只被僱主使用於招聘廣告所示的職位申請。假若機構當中根本沒有此空缺，如此收集個人資料便會構成《私隱條例》下的不公平收集，繼續使用該些個人資料游說求職者應徵其他機構的工作，更遠超求職者的合理期望。

招聘過程可算是僱主與求職者的第一次正式接觸，僱主應該自發地做好保障求職者個人資料的工作，視尊重個人資料私隱為良好公司管治不可或缺的一環，同時展現道德企業形象，吸納更多人才。

Lesson learnt

Job applicants provide their personal data in response to the information detailed in job advertisements. They naturally expect their personal data to be used only for the purpose of processing their applications for the advertised posts. If the advertised post does not actually exist, such collection of personal data may constitute unfair collection under the Ordinance. It is beyond job applicants' reasonable expectation if the personal data collected from them is subsequently used for persuading them to apply other companies' jobs.

Recruitment is the first contact between job applicants and employers. Employers should proactively protect job applicants' personal data, and embrace respecting personal data privacy as an indispensable part of corporate governance. It helps employers portray themselves as ethical corporates and attract high caliber talents.

檢控及定罪個案

在本報告年度有一宗被檢控及被定罪的個案，涉及使用個人資料作直接促銷。



一間電訊公司被控沒有依從拒收直銷訊息要求 – 《私隱條例》第35G條

投訴內容

投訴人是一電訊公司的客戶。在2016年5月，投訴人曾透過電話向該公司提出拒收直銷訊息要求，但其後仍分別於同年6月及8月收到該公司向她推廣服務的來電。

結果

該公司被控違反兩項《私隱條例》的罪行。兩項控罪均指被告沒有依從資料當事人的拒收直銷訊息要求，而繼續使用其個人資料作直接促銷，違反了《私隱條例》第35G(3)條。該公司承認控罪，每項控罪分別被判罰款10,000元，共被判罰款20,000元。

PROSECUTION AND CONVICTION CASES

During the reporting period, one case had been prosecuted and convicted, which was related to the use of personal data in direct marketing.

A telecommunications company convicted for failing to comply with an opt-out request – section 35G of the Ordinance

The Complaint

The complainant was a customer of a telecommunications company. In May 2016, she made her opt-out request in direct marketing by phone to the company. However, the complainant still received direct marketing calls in June and August 2016 promoting the company's services.

Outcome

The company was charged with two offences under section 35G(3) of the Ordinance for failing to comply with the requirement from a data subject to cease to use her personal data in direct marketing. The company pleaded guilty to both charges, and was fined HK\$20,000 in total (HK\$10,000 in respect of each charge).



借鑑

為了有效地依從客戶的拒絕直銷服務要求，服務供應商應備存一份拒收直銷訊息的客戶名單，並適時發放至有關部門同事，以停止使用名單內的客戶資料作直銷用途。此外，服務供應商亦應制定內部查閱及更新拒收直銷訊息的客戶名單的正規程序，及向員工提供適當的培訓，確保員工了解並依從。

即使外判服務承辦商（作為資料處理者）進行直接促銷，服務供應商（作為資料使用者）亦須採取合約規範方法或其他方法，確保其直接促銷活動符合《私隱條例》的規定，並應在承辦商進行直接促銷前，與其核對最新的拒收直銷訊息的名單，以及訂立機制適時地把已更新的名單通知對方。

機構把不希望收到直接促銷信息的客戶，加入拒收直銷訊息的客戶名單，並向客戶交代此做法，在符合《私隱條例》的規定之餘，亦屬尊重客戶意願的表現。這樣不但可加強顧客的信心，更能彰顯機構對保障個人資料私隱的承擔，體現問責原則，從而提升商譽和增強競爭優勢。

Lesson learnt

In order to comply with customers' opt-out requests effectively, service providers have to maintain a list of all customers who have indicated that they do not wish to receive further marketing approaches (i.e. the Opt-Out List) and distribute the Opt-Out List to the staff members of the relevant department in a timely manner. Service providers should also have standing procedures for its staff members to follow and provide appropriate training with regard to accessing and updating the Opt-Out List for compliance with opt-out requests by their customers.

Even a service provider outsources the direct marketing to an agent (as a data processor), the service provider (as a data user) is required to adopt contractual or other means to ensure that the direct marketing activities comply with the requirements under the Ordinance. The service provider should check with the agent its latest Opt-Out List before making any direct marketing approaches, and introduce a mechanism to notify the agent the updated List from time to time.

To comply with the requirements of the Ordinance and show respect to customers' wishes, organisations should add customers who do not wish to receive direct marketing materials to the Opt-Out List, and inform the customers of such arrangement. This approach would not only reinforce consumer trust but also exemplify organisations' commitment to personal data privacy protection and realise the principle of accountability, thereby elevating their reputation and increasing their competitiveness.