# 法律
Legal


gender: male
eye colour: dark brown
skin colour: yellow
hair colour: black
blood type: AB+
age:36
height: 1.80m

## 檢討建議中的法例

根據條例第8(1)(d)條的規定，私隱專員如認為建議中的任何法例可能對個人資料私隱有所影響，則須審核該等法例，並向建議制定有關法例的人士報告審核結果。香港政府各個決策局已獲通知，盡早在建議立法初期將可能對個人資料私隱有影響的事宜知會公署，以便私隱專員執行此項職能。公署除了檢討由上述途徑獲知的建議中的法例外，公署的法律部亦審閱在政府憲報發表的所有條例草案，因為這些條例草案可能對私隱有所影響，所以需要作出評論。

在本年報期內，公署共對五條建議中法例提出詢問或作出評論。附錄二載有公署在本年報期內對建議中的法例的評論的撮要。

## 檢討《個人資料(私隱)條例》

私隱專員鄧爾邦先生
Mr. Raymond Tang, Privacy Commissioner

自條例在一九九六年生效以來，公署在日常運作中間中會遇上實際困難，而這些困難是源自條例某些條文的草擬方式。為能盡量有效地減少這方面的困難，以及達致保障個人資料私隱的目的，公署一直就可否對條例作出修訂一事與民政事務局進行商討。至目前為止，曾作出詳細討論的事項全屬「技術」性質，即並無涉及任何基本概念。公署希望將建議中的修訂草案盡量簡化，方便立法會日後通過。至於其他可能修訂的屬基本性質的事項，則會在日後的適當階段，在對條例作出全面檢討時詳加研究。

草擬委託書擬稿已在本年報期以前送交律政司評論。在本年報期間，公署、民政事務局及律政司曾就某些特定問題進行商討。在本年報期間結束時，有關當局並未就建議的修訂事項確訂立法時段，公署希望在完成條例草案擬稿時，盡快取得所需的立法時段。



## Review of Proposed Legislation

By virtue of section 8(1)(d) of the PD(P)O, the Privacy Commissioner is required to examine any proposed legislation that he considers may affect the privacy of individuals in relation to personal data, and to report the results of his examination to the person proposing the legislation. To enable the Commissioner to carry out this function, all Policy Bureaux of the Hong Kong Government have been asked to ensure that legislative proposals that may affect privacy in relation to personal data are notified to the PCO at an early stage. In addition to reviewing proposed legislation notified to the PCO in this way, the Legal Division of the PCO also reviews all Bills published in the Government Gazette for possible personal data privacy implications on which comments may be required.

During the period under review, the PCO raised enquiries or made comments on 5 items of proposed legislation. Summaries of the PCO's comments on proposed legislation during the reporting period are given in Appendix II.

## Review of the Personal Data (Privacy) Ordinance

Since the PD(P)O came into effect in 1996, the PCO has in its daily operations occasionally come across practical difficulties stemming from the way in which particular provisions of the PD(P)O have been drafted. In order that such difficulties be alleviated, and the protection of personal data privacy be achieved as effectively as possible, the PCO has been in discussion with the Home Affairs Bureau regarding possible amendments to the PD(P)O. The amendments being discussed in detail so far, however, are all considered to be of a "technical" nature in that they do not touch on any fundamental concepts. The intention is to keep the proposed amendment bill relatively simple to facilitate its passage through the Legislative Council. As for any other possible amendments of a fundamental nature, these will be left for further study in an overall review of the PD(P)O to be conducted at a suitable stage in the future.

Draft drafting instructions have been sent to the Department of Justice for comment before the period under review. During the period under review, further discussions took place between the PCO, the Home Affairs Bureau and the Department of Justice on specific issues. At the end of the period under review, no legislative slot had yet been secured with the Legislative Council, but the intention was to secure the earliest slot possible once the draft bill is ready.

## 公署對《個人資料(私隱)條例》釋義摘要

條例在一九九六年生效以來，甚少相關的法庭判例，因而缺乏條例條文釋義的司法先例可供援引。對法律界及資料使用者來說，這種缺乏判例的情況無法協助他們明白條例的含義，尤其是條例中一些複雜而不明確的條文，更是難於理解。

另一方面，公署卻收到大批根據條例提出的投訴及查詢個案。多年以來，公署在履行職務時，在處理投訴及查詢個案的過程中，已對條例的相關條文有本身的見解，並盡量將有關見解貫徹在所處理的個案中。在此方面，雖然根據條例的規定，私隱專員無權對條例條文作出確實的詮釋，但從實際的角度看來，這些意見對資料使用者或他們的法律顧問顯然重要。

故此，為加深市民大眾對條例的理解，公署計劃以小冊子的形式出版條例釋義的助讀資料，協助大家了解條例的規定。公署在本年報期間已擬備小冊子，以期在二零零二年年底出版該本小冊子。

## 向行政上訴委員會提出的上訴個案的簡述

根據《個人資料(私隱)條例》的規定，如私隱專員決定行使條例第39條的權力，拒絕對投訴進行或繼續進行調查，則投訴人可就私隱專員的決定向行政上訴委員會提出上訴。此外，如私隱專員在完成調查後，決定不向被投訴的資料使用者發出執行通知，則投訴人亦可就此事向行政上訴委員會提出上訴。除此之外，如私隱專員決定根據調查結果向被調查的資料使用者發出執行通知，則該資料使用者亦可就此事向行政上訴委員會提出上訴。

## Notes on the PCO's Interpretation of the Personal Data (Privacy) Ordinance

The PD(P)O came into operation in 1996. So far, there have been very few related court cases. Hence, there is a scarcity of judicial precedents on the interpretation of its various provisions. So far as the legal profession and data users are concerned, such scarcity in case law does not assist in their understanding of the PD(P)O, especially in view of the fact that some of the provisions of the PD(P)O, being either complicated or vague, tend to be difficult to understand.

On the other hand, there have been a great number of complaint and enquiry cases under the PD(P)O brought to the PCO. In the discharge of its functions in handling such complaints and enquiries, the PCO has over the years developed its own interpretation of the relevant provisions of the PD(P)O, which it seeks to apply consistently to all cases handled by it. In this connection, although the Commissioner is not empowered under the PD(P)O to give any definitive interpretation to the provisions of the PD(P)O, such views are obviously important from the practical point of view, insofar as data users or their legal advisors are concerned.

To help deepen public understanding of the PD(P)O, therefore, the PCO plans to issue, in the form of a booklet, notes on its interpretation of the requirements of the PD(P)O. During the period under review, a draft of the booklet was prepared, with the aim of publishing it by the end of the calendar year 2002.

## Notes on Appeal Cases Lodged with the Administrative Appeals Board (AAB)

Under the PD(P)O, where the Privacy Commissioner has decided to exercise his power under section 39 to refuse to investigate or to continue to investigate a complaint brought to him, the complainant may appeal to the Administrative Appeals Board against such decision. Furthermore, where the Commissioner had completed an investigation, his decision not to issue an enforcement notice against the data user complained against may be the subject of an appeal to the Board by the complainant. Alternatively, if as a result of an investigation the Commissioner decides to issue an enforcement notice against the data user investigated against, the data user may also appeal to the Board against the enforcement notice so issued.

## 由收集傳真口供紙所引致的上訴(1/02)

投訴人投訴他工作的政府機構的一名同事。投訴人在該機構當值期間，發生了一宗打架事件，結果是他須向負責調查該事件的另一政府部門提供一份口供。其後，負責調查的部門透過投訴人工作機構的傳真號碼將該口供傳真給投訴人。投訴人指稱該名同事保留了該口供的副本，當中載有他的個人資料。

在私隱專員進行調查的過程中，投訴人及涉案的有關人士就投訴作出不同的描述。私隱專員於是根據條例第 44 條，傳召有關人等在宣誓後進行訊問。私隱專員在調查後認為並無足夠證據證明情況一如投訴人所指稱，該名同事有保留該份口供的副本。故此，私隱專員認為並無出現違反保障資料第1(2)原則或第2(2)原則的情況，因而決定不發出執行通知。投訴人進行上訴及在上訴程序中傳召兩名新證人作證。

對上訴作出聆訊後，行政上訴委員會的決定是，私隱專員已非常詳細訊問有關證人，訊問的錄音記錄長達 80 頁。鑑於已作出全面的訊問，故當投訴人未能提供充份理由，解釋為何在早前的訊問中並無提議傳召該兩名證人應訊時，行政上訴委員會決定不行使酌情權傳召該兩名新證人在上訴中作證。此外，行政上訴委員會亦認為私隱專員已召見有關證人，並在他們宣誓後進行訊問，故有權就上訴所涉事項作出定論。行政上訴委員會認為由於本個案所涉及的問題主要是爭議事項的可信程度，故沒有需要亦不適宜重新訊問有關證人，藉以對所涉事項另作定論。故此，行政上訴委員會一致維持私隱專員不發出執行通知的決定。

## Appeal arising from complaint about collection of faxed statement (1/02)

The complainant lodged a complaint against a colleague in the government institution where he worked. An incident involving fighting had occurred while he was on duty at the institution and, as a consequence, he had made a statement to another government department investigating the incident. Subsequently, the investigating department faxed a copy of the statement to the complainant via a fax number of the institution. The complainant alleged that the colleague had kept a copy of the statement, which contained his personal data.

During the course of an investigation by the Commissioner, the complainant and the individuals concerned with the complaint gave different accounts on the events pertaining to the complaint. The Commissioner thus summoned the relevant individuals before him for an examination under oath under Section 44 of the PD(P)O. After carrying out an investigation, the Commissioner formed the view that there was insufficient evidence to prove that the colleague concerned had kept a copy of the statement as alleged by the complainant. Therefore, the Commissioner found that there was no contravention of DPP1(2) or DPP2(2) and decided not to issue an enforcement notice accordingly. The complainant appealed and sought to call two new witnesses during the appeal proceedings.

After hearing the appeal, the AAB decided that the Commissioner had already undertaken a very full examination of the relevant witnesses. The transcript of the examination ran to more than 80 pages. Given the very full extent of the examination, the AAB decided not to exercise its discretion to allow the two new witnesses to be called at the appeal when the complainant offered no adequate reason to explain why he had not suggested those two witnesses to be summoned for questioning at the previous examination. The AAB further decided that the Commissioner, having seen and heard the relevant witnesses under oath, was entitled to make those findings of facts being challenged in the appeal. The AAB considered it neither necessary nor desirable in the present case, where the issue was essentially one of credibility in a dispute of fact, to re-hear the relevant witnesses for the purpose of making separate findings of fact. Hence, the AAB unanimously upheld the decision of the Commissioner not to issue an enforcement notice.

## 由拒絕依從改正個人信貸資料要求的投訴所引致的上訴 (2/02)

投訴人向公署投訴一間信貸資料服務機構，指稱該機構拒絕依從他的改正資料要求，沒有將該機構所持有關於他的一些不準確的個人信貸資料刪除。不過，該機構在向提供涉案信貸資料的信貸提供者作出查詢後，口頭上獲證實該等資料是準確的。故此，該機構拒絕依從有關改正資料要求。

考慮過投訴人的指稱及作出初步查詢後，公署通知投訴人，根據條例第39條，公署不會對該個案作進一步調查，理由是有關機構的做法的確符合《個人信貸資料實務守則》當時的第2.9段的規定(該守則的第2.9段訂明信貸資料服務機構在收到改正資料要求後，必須立即諮詢有關信貸提供者。此外，該守則亦訂明如有關信貸資料服務機構由要求改正資料日期起計40日內仍沒有收到信貸提供者就爭議中的資料作出的任何證實或改正，則有關資料應在該40日屆滿時予以刪除或因應要求作出修訂)。投訴人不滿公署的決定，於是提出上訴。

投訴人在上訴時辯稱該機構並無按照保障資料第2(1)(a)原則採取所有切實可行的步驟，以該機構並非信貸交易的其中一方，故只能依賴信貸提供者所提供的資料。基於此點，行政上訴委員會維持私隱專員的決定及將上訴駁回。行政上訴委員會順帶建議信貸提供者須以書面證實爭議中的信貸資料是準確的，以免引起誤會。

## Appeal arising from complaint about refusal to comply with data correction request in relation to consumer credit data (2/02)

The complainant lodged a complaint to the PCO against a credit reference agency. He alleged that the agency had refused to comply with his request for correction by deleting certain inaccurate consumer credit data held by the agency in respect of him. However, after making enquiries with the relevant credit provider who supplied the agency with the credit data in question, the agency received oral confirmation from it that the credit data were accurate. Thus, the agency refused to comply with the request for correction.

After considering the complainant's allegations and making some preliminary enquiries, the PCO notified the complainant under section 39 of the PD(P)O that there was to be no further investigation of the case. The reason was that what had been done by the agency was clearly in accordance with the requirements of the then paragraph 2.9 of the Code of Practice on Consumer Credit Data. (Paragraph 2.9 of the Code provided that upon receiving a request for correction, the credit reference agency should promptly consult with the credit provider. It further provides that if the agency did not receive from the credit provider any confirmation or correction of the disputed data within 40 days from the correction request, the relevant data should, upon expiry of the 40 days, be deleted or otherwise amended as requested.) Dissatisfied with the PCO's decision, the complainant appealed.

In the appeal, the complainant contended that the agency had not taken, as required by DPP2(1)(a), all reasonably practicable steps to ensure that the data were accurate having regard to the purpose for which the personal data were or were to be used. After hearing the appeal, the AAB held that the central issue was whether the agency could adequately discharge its responsibility under DPP2(1)(a) by relying upon the oral confirmation provided by the relevant credit provider that the credit data concerned were accurate. The AAB considered that, not being a party to the credit transaction in question, the agency could only rely upon information provided to it by the credit provider. On that basis, the AAB upheld the Commissioner's decision and dismissed the appeal. Incidentally, the AAB recommended that any confirmation provided by a credit provider that the credit data in dispute was accurate should be made in writing in order to prevent misunderstanding.

## 由針對不正確新聞報導作出的投訴引致的上訴(3/02)

投訴人及他的朋友參加社交聚會，當中包括一名雜誌記者及攝影師，以便撰稿報導聚會的情況。其後，雜誌刊登了一篇報導該聚會的文章。投訴人向公署投訴該雜誌，指稱該文章刊登了他的照片，而該照片是未經他同意拍攝的。他並指稱文章中關於他的報導大部分是虛構的，包括錯誤報導他的職銜。

公署在進行初步查詢後通知投訴人，根據條例第39條，公署不會對個案作出調查。關於未經投訴人同意而涉嫌偷拍他的照片一事，公署認為由於投訴人早已知道有攝影師在場，他應預計到攝影師會在聚會上拍攝照片。至於所指稱的虛構報導，公署認為那只是記者的報導手法，條例因而不會作出規管。關於錯誤報導投訴人的職銜，公署認為那可能是由誤會引致。故此，公署認為毋須對個案進行調查。投訴人就私隱專員不進行調查的決定提出上訴。

就上訴進行聆訊後，行政上訴委員會一致維持私隱專員的決定。值得一提的是，行政上訴委員會認為，雖然條例是要保障個人資料，但從條例第2條的「個人資料」的釋義中，可清楚知道個人資料並不包括任何人對他人作出的虛構資料或謊言。至於錯誤報導投訴人的職銜，行政上訴委員會認為那只是一件微不足道的事，私隱專員可毋須理會，上訴因而被駁回。

## Appeal arising from complaint about inaccurate news reporting (3/02)

The complainant and his friends participated in a social gathering. A reporter and a photographer from a magazine were present during the gathering with a view to writing an article on the gathering. Subsequently, an article relating to the gathering was published in the magazine. The complainant lodged a complaint to the PCO against the magazine alleging that a published photograph of him had been taken without his consent. He further alleged that a large part of what was written about him was complete fabrication, including the attribution to him of a job title that was wrong.

After conducting some preliminary enquiries, the PCO notified the complainant under section 39 of the PD(P)O that there was to be no investigation of the case. On the question of the alleged covert photographing without the complainant's consent, the PCO took the view that, since the complainant knew that the photographer was present at the scene, he should have known or foreseen that the photographer would take photographs during the gathering. Regarding the alleged fabrication, the PCO considered this to be a question on the manner of reporting and, as such, was not meant to be regulated by the PD(P)O. Regarding the alleged wrong description of job title, the PCO considered that it could be due to a misunderstanding. Accordingly, no investigation of the case was considered necessary. The complainant appealed against the Commissioner's decision of not carrying out an investigation.

After hearing the appeal, the AAB unanimously upheld the decision of the Commissioner. In particular, the AAB decided that while the PD(P)O was meant to protect personal data of an individual, the definition of "personal data", as defined in section 2 of the PD(P)O, was clear enough to exclude any fabrication or lies told about a person by another person. Regarding the wrong description of the complainant's job title, the AAB decided that it was so trivial that the Commissioner could have totally ignored it. The appeal was therefore dismissed.


## 由保留與民事訴訟有關的信貸資料的投訴引致的上訴(4/02)

投訴人因一九九九年欠下的一筆債項而被起訴。有關事件的法律行動在二零零零年初已告終結，而信貸資料服務機構在二零零零年底將該法律行動及其後的和解辦法的資料記錄在信貸報告內。其後，投訴人要求信貸資料服務機構刪除與該法律行動及和解辦法有關的信貸資料。不過，有關信貸資料服務機構拒絕依從他的要求。投訴人於是向公署投訴該機構保留過多他的個人資料。

公署作出調查後通知投訴人該信貸資料服務機構並無違反條例或《個人信貸資料實務守則》的規定。該守則附表當時的第4段准許信貸資料服務機構保留「官方紀錄內與向一名個人採取任何追收欠債法律行動有關而可供大眾查閱的資料」，條件是信貸資料服務機構應在「官方紀錄所顯示的開展法律行動後7年內」刪除該等個人資料。公署認為該機構憑藉該段而有權保留投訴人的法律行動資料直至二零零六年，即由一九九九年展開法律行動起計七年。故此，該機構拒絕刪除有關資料一事並無違反條例或守則的規定。由於並無違例，故公署不建議發出執行通知。投訴人就此提出上訴。

就上訴進行聆訊後，行政上訴委員會認為由於守則該段所用的字眼是「7年內」而非「在7年屆滿時」，故最長的保留期間為7年。有鑑於此，行政上訴委員會判決上訴得直，故此，信貸資料服務機構可運用酌情權縮短保留該有關的官方紀錄的期限，並指示私隱專員督導該機構適當地行使它的酌情權。

## Appeal arising from complaint about the retention of credit data relating to a civil action (4/02)

The complainant was sued for the recovery of a debt in 1999. The legal action was settled in early 2000. Information relating to the action and its settlement was recorded in a credit report by a credit reference agency in late 2000. Subsequently, the complainant made a request to the agency for the deletion of the credit data relating to the legal action and its settlement. However, his request was refused by the agency. The complainant therefore lodged a complaint to the PCO against the agency for excessive retention of his personal data.

After carrying out an investigation, the PCO notified the complainant that the agency had not contravened the requirements of the PD(P)O or the Code of Practice on Consumer Credit Data. The then paragraph 4 of the Schedule to the Code allowed a credit reference agency to retain "data in official records that are publicly available relating to any action for the recovery of a debt against an individual", subject to the condition that such personal data should be deleted by the credit reference agency "no later than 7 years after the date of commencement of the action as shown in the official records". The PCO took the view that, by virtue of that paragraph, the agency concerned was entitled to retain the complainant's data relating to the legal action until 2006, i.e., 7 years after the commencement of the legal action in 1999. Therefore, the refusal to delete the relevant data by the agency did not contravene the PD(P)O or the Code. As there was no contravention, the PCO did not propose to serve an enforcement notice. The complainant appealed.

After hearing the appeal, the AAB decided that, as the wording used in the relevant paragraph of the Code was "no later than 7 years" rather than "at the expiry of 7 years", the seven year period was the maximum period for retention. A credit reference agency therefore had discretion to retain the relevant public record data for a shorter period, which discretion should be exercised properly according to the circumstances of the case. On that basis, the AAB allowed the appeal and directed the Commissioner to supervise the agency concerned to exercise its discretion accordingly.