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指引資料

香港個人資料私隱專員公署
Office of the Privacy Commissioner for Personal Data, Hong Kong

學校在2019冠狀病毒病疫情期間收集及使用教職員及學生個人資料的指引

導言

2019冠狀病毒病疫情在香港雖然有所緩和，但未完全受控。隨着中小學及幼稚園於2020年9月23日開始逐步全面復課，學校有必要施行適當的防疫措施，當中或涉及收集教職員及學生的個人資料，包括屬較敏感的個人健康資料。就此，香港個人資料私隱專員公署（私隱公署）提醒學校應在保障公眾健康與妥善保障個人資料私隱之間採取合理的平衡，並提供以下的指引。

1. 學校可否收集教職員及學生的體溫測量紀錄、出行紀錄及其他健康狀況資料？

學校收集教職員及學生的體溫測量紀錄、出行紀錄及其他健康狀況資料，有助學校評估病毒在校內傳播的風險，保障教職員及學生的健康，因此一般而言屬合理的防疫措施。

然而，**私隱公署建議學校，在考慮收集教職員及學生哪些類別的個人資料時，應該只收集必要、適當以及與所收集資料的目的相稱的資料。**學校不應收集與2019冠狀病毒病無關或無必要的個人資料。學校亦應考慮採取自我申報機制，並以選擇題為主的問卷形式收集個人資料，避免提出開放式問題，以免意外地收集了不必要的個人資料。

除非教職員或學生出現2019冠狀病毒病的病徵（例如發燒和乾咳）、剛從境外地區（特別是高風險地區）回港、曾經到訪高感染風險的場所（例如醫院）、曾與受感染者有過密切接觸，或有其他高風險跡象，否則學校應該在合理的時間內將有關資料刪除，毋須保留存檔，以減少收集個人資料和減低資料外洩的風險。

此外，根據《個人資料（私隱）條例》（香港法例第486章，《私隱條例》）附表1的保障資料第1(3)(b)(i)原則，**學校必須在收集個人資料之時或之前以切實可行的步驟**（例如以通告形式）**向教職員、學生及家長提供「收集個人資料聲明」，**當中說明所收集的個人資料的類別、其收集目的（例如保障教職員及學生健康），以及資料可能會被轉移予哪些類別人士（例如公共衞生部門）等。作為良好的行事常規，學校亦應在「收集個人資料聲明」中告知教職員、學生及家長有關資料的保存期限。

2. 學校可否把教職員及學生的個人資料用於其他目的或披露予其他人士？

學校從教職員及學生所收集的個人資料，應只限用於當初向相關人士說明的目的（例如保障教職員及學生的健康）或直接有關的目的。根據保障資料第3原則，如學校欲將教職員或學生的個人資料用於新目的或披露予其他人士作新目的之用，必須事先徵得有關教職員、學生或其家長的「訂明同意」（即自願及明示的同意）。

如資料當事人（即學生）未成年，《私隱條例》容許「有關人士」於特定情況下代資料當事人提

供「訂明同意」。「有關人士」一般是指對該未成年人士負有作為父母親的責任的人或其監護人。

《私隱條例》對特定情況下使用和披露個人資料作出豁免，毋須取得資料當事人的訂明同意。有關情況的例子包括：（1）為了保障公眾健康，將學生的身份、健康狀況及位置資訊披露予公共衞生部門以追蹤和治療2019冠狀病毒病的感染者（見《私隱條例》第59(1)(b)及(2)條）；以及（2）為遵從法例的規定（例如《預防及控制疾病（披露資料）規例》（香港法例599D章））而使用或披露學生的個人資料（見《私隱條例》第60B(a)條）。

當有教職員或學生不幸確診2019冠狀病毒病，學校可在不透露確診者的個人身份信息下通知其他教職員、學生及家長，例如有關教職員及學生曾到過的課室及參與的集體活動。在大多數情況下，於告示中披露確診者的名字及其個人資料會被視為不必要或不相稱。

3. 學校可以保留所收集的個人資料多久？

當收集個人資料的目的已達成，例如自收集日期起經過一段合理時間亦沒有證據顯示相關教職員及學生感染了2019冠狀病毒病，學校便應永久銷毀為對抗2019冠狀病毒病而收集的個人資料。為確定何謂「一段合理時間」，學校可參考公共衞生部門的資訊，包括2019冠狀病毒病的通常潛伏期。在大部分情況下學校不應長期保存有關的個人資料。

4. 在資料保安方面學校有甚麼須要注意？

學生多數為未成年人士，就保障個人資料私隱而言，他們需要較多的保護。況且，有關學生的健康狀況以及感染2019冠狀病毒病的相關資料非常敏感，一旦外洩可能對相關人士造成較大傷害（包括心理傷害），所以相關的資料保安尤其重要。

根據保障資料第4(1) 原則，學校應採取所有切實可行的步驟以保障所收集的個人資料免遭未經授權或意外的存取、處理、刪除、遺失或使用，例如把資料存放於上鎖的櫃中、對數碼資料進行加密、對裝有個人資料的電子裝置加設密碼保護，並僅限獲授權人士在有必要的情況下查閱資料。

一旦發生資料外洩事故，學校應盡早通知相關的教職員、學生、家長、私隱公署，甚或警方。

5. 教職員及學生就其個人資料有何權利？

個人資料屬於資料當事人，學校應抱有尊重、謹慎的態度處理教職員及學生的個人資料。一般而言，教職員及學生可要求查閱和改正其個人資料。根據保障資料第1(3)(b)(ii)原則，學校應在收集個人資料之時或之前，明確告知教職員及學生相關權利，並提供負責的教職員的姓名和聯絡方法供其他教職員、學生及家長行使有關權利，以及查詢其他個人資料私隱相關事宜。

Guidance for Schools on the Collection and Use of Personal Data of Teachers, Staff and Students during COVID-19 Pandemic

Introduction

Although the COVID-19 epidemic in Hong Kong has abated, it is not totally under control yet. As kindergartens, primary and secondary schools will resume classes in phases from 23 September 2020, it is necessary for schools to implement appropriate epidemic prevention measures, which may involve the collection of personal data of teachers, staff and students, including the more sensitive health data. In this regard, the Office of the Privacy Commissioner for Personal Data (PCPD) reminds schools to strike a reasonable balance between safeguarding public health and protecting personal data privacy, and provides the following guidance.

1. Can schools collect temperature measurements, travel histories and other health data of teachers, staff and students?

Collection of temperature measurements, travel histories and other health data of teachers, staff and students assists schools to assess the risk of transmission in schools and safeguard the health of teachers, staff and students. Hence, generally speaking it is a reasonable epidemic prevention measure.

However, **the PCPD recommends that schools should only collect necessary and appropriate data which is proportional to the collection purposes when they consider collecting personal data of teachers, staff and students**. Personal data irrelevant to and unnecessary for the prevention of COVID-19 should not be collected. Schools should also consider adopting a self-reporting system and collecting personal data through questionnaires which provide multiple-choice answers. Open-ended questions should be avoided lest unnecessary personal data are collected inadvertently.

Unless teachers, staff or students have symptoms of COVID-19 (such as fever and dry cough); have just returned to Hong Kong from abroad (especially high-risk places); have visited premises with a high risk of infection (such as hospitals); have close contacts with infected persons; or have other indications of being high risk, schools should delete the data within a reasonable period and should not retain the data to minimise the personal data collected and reduce the risk of data leakage.

Moreover, under Data Protection Principle (DPP) 1(3)(b)(i) of Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong, PDPO), on or before collecting personal data, **schools shall take practicable steps** (such as by way of notice) **to provide teachers, staff, students and parents with the Personal Information Collection Statement (PICS)**, stating the kinds of personal data to be collected, the purposes of collection (such as safeguarding the health of teachers, staff and students), and the classes of persons (such as public health authorities) to whom the data may be transferred. It is also a good practice for schools to inform teachers, staff, students and parents of the retention period of the data in the PICS.

2. Can schools use personal data of teachers, staff and students for other purposes or disclose the data to other parties?

Personal data collected from teachers, staff and students by schools should only be used for the original purposes that the relevant parties were informed of (such as safeguarding the health of teachers, staff and students) or directly related purposes. Under DPP 3, schools must obtain the "prescribed consent" (i.e. voluntary and express consent) of teachers, staff, students or their parents before using the relevant data for a new purpose or disclosing the data to other parties for a new purpose.

If the data subject (i.e. student) is a minor, the PDPO allows a "relevant person" to provide the "prescribed consent" on behalf of the data subject under specified conditions. In general, a "relevant person" is a person who has parental responsibility for the minor or the guardian of the minor.

The PDPO allows certain situations under which the use and disclosure of personal data may be exempted from seeking the data subject's prescribed consent. The situations include, for example, (1) the disclosure of the identity, health and location data of students to public health authorities for tracing and treating persons infected with COVID-19 and safeguarding public health (see sections 59(1)(b) and (2) of the PDPO); and (2) the use or disclosure of students' personal data for compliance with the requirements of laws (such as the Prevention and Control of Disease (Disclosure of Information) Regulation, Cap. 599D of the Laws

of Hong Kong) (see section 60B(a) of the PDPO).

If a teacher, staff or student is unfortunately diagnosed with COVID-19, the school may notify other teachers, staff, students and parents of the same without disclosing the identity of the infected person, such as disclosing the classrooms visited and group activities participated by the infected person. Under most circumstances, disclosure of the name and other personal particulars of an infected person in the notification will be considered as unnecessary or disproportionate.

3. How long can schools retain the personal data collected?

When the purpose of collection is fulfilled, such as after a reasonable period since the date of collection, there is no evidence showing that the teachers, staff and students have been infected with COVID-19, the school should permanently destroy the personal data collected for combatting COVID-19. As to what constitutes "a reasonable period", schools may refer to information provided by the public health authorities, including the common incubation period for COVID-19. In most cases, schools should not retain the personal data for a long period.

4. What should schools be mindful of in relation to data security?

As most students are minors, from a personal data privacy protection perspective, they need more protection. In particular, students' health data and information relating to COVID-19 infection are very sensitive. If the data is leaked, it may cause significant harm (including psychological harm) to the relevant persons. Hence, data security is of particular importance in this context.

Under DPP 4(1), schools should adopt all practicable steps to protect the personal data collected against unauthorised or accidental access, processing, erasure, loss or use, such as storing the data in a locked cabinet; encrypting digital data; using passwords to protect electronic devices which contain personal data and only allowing authorised personnel to have access to the data on a need-to-know basis.

In case a data leakage occurs, the school should notify the teachers, staff, students, parents and the PCPD, or even the Police, as soon as possible.

5. What are the rights of teachers, staff and students in relation to their personal data?

As personal data belongs to the data subjects, schools should handle personal data of teachers, staff and students in a respectful and prudent manner. Generally speaking, teachers, staff and students may request access to and correction of their personal data. Under DPP 1(3)(b)(ii), schools should inform teachers, staff and students of their rights on or before collecting their personal data, and provide the name and contact information of the staff responsible for handling such requests so that the teachers, staff, students and parents can exercise their rights, and enquire about personal data privacy related matters.

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香港個人資料私隱專員公署
Office of the Privacy Commissioner for Personal Data, Hong Kong

查詢熱線 Enquiry Hotline : **(852) 2827 2827**
傳真 Fax : **(852) 2877 7026**
地址 Address : **香港灣仔皇后大道東248號陽光中心13樓1303室**
Room 1303, 13/F, Sunlight Tower, 248 Queen's Road East, Wanchai, Hong Kong
電郵 Email : **communications@pcpd.org.hk**

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