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專題報道
使用公共領域
個人資料的私隱問題

Cover Story
Privacy Issues Arising from the Use of
Personal Data Obtained
from the **Public Domain**



《私隱專員公署通訊》改革號以新的設計、新的風格和更豐富的內容與大家見面！

今次改版採納了年初讀者意見調查所得的一些建議，我們希望以雜誌化的手法探討保障個人資料私隱權和相關的課題，以及分享公署最新的報告、建議和資源。不論你是保障資料主任、符規人員，還是來自不同行業的人士，我們的目標是為資料使用者提供一個分享知識、想法和經驗的園地。

今時今日，愈來愈多商業機構利用資訊科技和網上渠道管理、建立和發展客戶關係，營商者要考慮的私隱和符規問題也較以前複雜。私隱專員早前發出執行通知，指令一間資料庫營運商停止將取自法院和其他公共來源的個人訴訟和破產紀錄，供應給一個智能手機應用程式，事件引起一些資訊科技界人士的關注。有鑑於此，今期通訊專題報道「使用公共領域的個人資料」，深入淺出剖析調查的決定，並以答問形式回應關注的議題和澄清常見的誤解。

其他內容包括：物業管理行業人員分享如何在機構推動員工實踐保障個人資料；公署處理投訴個案的案例摘要，公署動態以及最新的培訓及公眾教育資源等等。希望你覺得通訊的內容有用。PI

We have launched the new and improved PCPD News, which has a new design, look and feel, and improved editorial content.

The revamp is based on the results of the readers' survey we conducted earlier this year. We want to produce a useful and informative magazine covering issues of data privacy in Hong Kong. We are keen to bring up-to-date reports, recommendations and resources from the Office of the Privacy Commissioner for Personal Data (PCPD) to you. Our goal is to provide a new venue for readers (compliance officers and other professionals responsible for data protection, as well as those involved in other departments of their organisations) to become inspired and share their knowledge and experience.

Today, with businesses relying more than ever on information technology and online channels to manage, build and develop their customer interactions, privacy and compliance issues have become more complicated than ever. In this latest edition, we discuss a debatable privacy issue – the use of personal data obtained from the public domain, following the Commissioner's decision to serve

an Enforcement Notice on a database operator that provided processed personal data it obtained from the courts and from other public sources. It comes with a Q&A session, which addresses many of the concerns raised by IT industry practitioners.

The newsletter also features experience-sharing on privacy practice by a property management practitioner in Industry Insight; the Commissioner's decisions in Case in Brief; recent events and news in PCPD in Action; and the newly released PCPD resources, which help increase public awareness.

We hope that you will find the revamped PCPD News useful and interesting, and as always, we welcome your feedback. PI

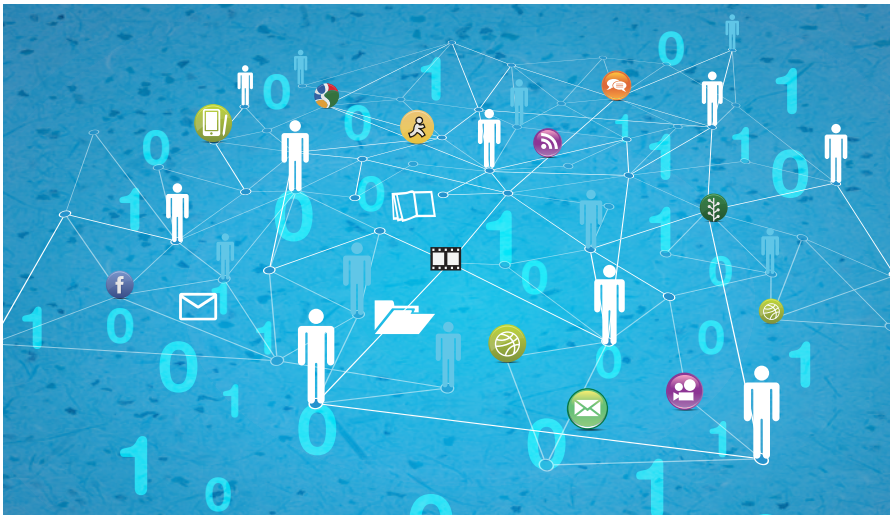
如有意見，或有意訂閱電子版的《私隱專員公署通訊》，請以電郵與我們聯絡：newsletter@pcpd.org.hk

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使用公共領域個人資料引伸的私隱問題

Privacy Issues Arising from the Use of Personal Data Obtained from the Public Domain



將公共登記冊及公告文件所載的個人資料匯集成網上資料庫，讓市民針對目標人物搜查不同資料來源的資料，無疑提供了方便省時的服務，但這種「二次使用」公共領域個人資料的做法，可能侵犯當事人的私隱。

The compilation of online databases using the personal data obtained from public registers and public notices is convenient. However, the secondary use of personal data obtained from the public domain may infringe on the data subjects' right to privacy.

許多人認為存在於公共領域，而不是從資料當事人直接收集的個人資料，已經「公開」，可以毫無限制地任意使用。這是一種誤解。

可從公共領域取得的個人資料比比皆是，例如公司登記冊上的董事及秘書資料、土地登記冊的業主資料、車輛登記冊上的車主資料、司法機構審訊案件表及訟案登記冊所載的當事人資料、憲報刊登破產通告的當事人資料，以至傳媒或互聯網網頁發佈的內容等等。

個人資料，無論是否公開供人查閱，都受《個人資料(私隱)條例》(「私隱條例」)的保障。若個人資料一旦公開，置於公共領域之中便不受條例保護，其後果將不堪設想——立心濫用他人資料的人，只要蓄意將資料公開，使之成為「公共領域的個人資料」，便可以繞過私隱條例而任意使用；有人取得某機構意外洩漏至公共領域的個人資料，加以不恰當使用，都會變成合法。

限制資料用途的原則

私隱條例中的保障資料第3原則對個人資料的使用作出規範：除非取得資料當

事人的明確及自願的同意，否則個人資料只可用於收集資料的目的或直接有關的目的。

就公共領域的個人資料而言，要符合第3原則，首先要考慮收集和公開有關資料的原來目的。公共登記冊通常是根據法例而設立的，公共登記冊的目的應盡量在規管該登記冊運作的法例中具體列明。

即使法例未有明確交代，也不難在公共登記冊的《收集個人資料聲明》或《私隱政策》，或查冊申請表格找到這目的及資料使用的限制。(見第5頁表一)

合理私隱期望

若未有訂明原來目的，或目的並不清晰，而我們再使用這些資料前，便須考慮最初收集和公開該等個人資料的實際情況，以及資料當事人對私隱的合理期望。所謂合理的私隱期望，即將心比己

去設想，一個合情理的人處於資料當事人的境況，其公開的個人資料被再次使用，他會否認為是在預期之外、不恰當或覺得反感。如果是的話，新的用途很可能違反保障資料原則，有損他人的私隱。毫無限制地使用公共領域的個人資料，意味著資料的準確性、保留期限和保安都不受控制，危害資料當事人的權益。

豁免

個人的私隱權並非絕對的權利，而是要與其他權利及公眾利益(如資訊自由)取得平衡。因此，私隱條例訂立了豁免條文，在特定情況下資料使用者可免受保障資料第3原則管限。這些豁免同樣適用於公共領域個人資料。

豁免條文涵蓋面相當廣泛，例如：第58條為了防止或偵測罪行、排除或糾正違法或嚴重不當行為或欺詐或舞弊行為而使用個人資料的情況而設；適用於從事執法或專業盡職審查的資料使用者。

第60B條則適用於法律程序規定所需；或為確立、行使或維護在香港的法律權利所需要而使用的個人資料。

第61條則為新聞活動提供豁免，若有合理理由相信出版和廣播相關資料是符合公眾利益，可不受保障資料第3原則管限。

指引

使用取自公共領域的個人資料是否抵觸私隱條例，不可一概而論，要考慮每宗個案的具體案情，再作判斷，為此，公署發出了《使用公共領域的個人資料指引》(www.pcpd.org.hk/chinese/files/publications/GN_public_domain_c.pdf)。P

毫無限制地使用公共領域的個人資料，意味著資料的準確性、保留期限和保安都不受控制，危害資料當事人的權益。

Many people are under the belief that personal data collected from the public domain, not from the data subjects directly, is open to unrestricted use. This is not correct.

There are many sources from which we can collect individuals' personal data: for example, information about company directors and secretaries from the Companies Registry; properties owners' information from the Land Registry; vehicle owners' information from the Register of Vehicles; parties involved in a legal proceeding from the daily cause lists and cause books maintained by the courts; bankruptcy notices published in the Gazette; and information published in the mass media and on websites.

Personal data, be it publicly available or not, is subject to protection under the Personal Data (Privacy) Ordinance ("the Ordinance"). Imagine the consequences if the opposite were true. Data users who intend to abuse personal data could get around the law by deliberately publicising the data in order to make it "personal data in the public domain". Furthermore, improper use of personal data that was leaked to the public domain by accident would be legitimised.

Use-limitation principle

Data Protection Principle 3 ("DPP3") of the Ordinance is a use-limitation principle, which provides that personal data should be used only for the purposes for which it was collected or for a directly related purpose, unless the explicit and voluntary consent of the data subject is obtained.

With respect to personal data in the public domain, the starting point for an application of DPP3 is thus the original purpose of collecting the personal data and making it publicly available. In the case of public registers, they are normally set up by statute. Ideally, the purpose of a public register should be stated as specifically as practicable in the legislation governing the operation of the registry.

Where the purpose of maintaining a public register is not expressly stated in the legislation, the purposes and limitations of use of the data may be found in the privacy policy or personal data collection statement of the registers, or the application form designed for

At the very least, personal data in the public domain, if used and re-used indiscriminately and without appropriate safeguards, would result in loss of control over the accuracy, retention and security of the data, thus jeopardising the interests of the data subjects.

access to the data maintained on the registers (see Table 1 on page 5).

Reasonable expectation of privacy

Where the original purpose is not prescribed or is unclear, before we further use the personal data concerned, we must look at the context in which the data was collected and made publicly available, and the reasonable expectations of the data subjects regarding personal data privacy. The test here is whether a reasonable person in the data subject's situation would find the re-use of the data unexpected, inappropriate or otherwise objectionable. If the answers are affirmative, the new purpose of data use would very likely violate the Data Protection Principle. At the very least, personal data in the public domain, if used and re-used indiscriminately and without appropriate safeguards, would result in loss of control over the accuracy, retention and security of the data, thus jeopardising the interests of the data subjects.

Exemptions

The right of individuals to privacy is not absolute. It must be balanced against other rights and public interest, such as freedom of information. Accordingly, the Ordinance specifically provides for certain exemptions from the application of DPP3 and they apply equally to personal data in the public domain.


These exemptions cover a wide range of areas.

For example, section 58 caters for personal data used for the prevention or detection of crime or for the prevention, preclusion or remedying of unlawful or serious improper conduct or dishonesty or malpractice by individuals. This may be relevant for data users engaged in law enforcement and professional due diligence.

Also, section 60B applies where the use of personal data is required or authorised by law, or in connection with any legal proceedings in Hong Kong.

Further, section 61 provides for exemption from DPP3 for news activities where the publishing or broadcasting of the personal data is in the public interest.

Guideline

There is no blanket approval of secondary use of personal data obtained from the public domain. Each case has to be determined based on its merits. In this regard, the PCPD issued *Guidance on Use of Personal Data obtained from the Public Domain* (www.pcpd.org.hk/english/files/publications/GN_public_domain_e.pdf). 

小檔案：

公共領域個人資料應否獲豁免於私隱條例的規管？

法律改革委員會曾研究把公共登記冊完全豁免於私隱條例，但結論認為不應被豁免。及至私隱條例最近一次修訂的公眾諮詢，政府重申資料存在於公共領域並不等於容許有關資料用於任何用途。上訴法庭在今年初一宗判決(參考案件CACV 4/2012)亦肯定這觀點。

Background:

Should personal data available in the public domain be exempt from regulation under the Ordinance?

The Law Reform Commission had carefully deliberated on whether public registers should be completely exempt from the Personal Data (Privacy) Ordinance and concluded that they should not. In the public consultation exercises leading up to the latest amendments to the Ordinance, the Government reaffirmed the view that "putting personal data in the public domain does not make the data available for use for any purpose". This was upheld in a recent Court of Appeal judgment (see CACV 4/2012).

表一： 有訂明收集和使用目的的公共領域個人資料

Table 1: Sources of public domain personal data with prescribed purposes of collection and use

資料使用者 Original data user	供公眾查閱的個人資料 Personal data for public access	原來目的 Original purposes	進一步使用的限制 Limitation on further use of the personal data
公司註冊處 Companies Registry	查閱公司登記冊 Search on Companies Registry	讓與某公司往來的人士確認公司董事或其他高級人員的身份 Enabling members of the public to ascertain whether they are dealing with a specified corporation or its directors or other officers	嚴禁複製、改編、分發、發佈或向公眾提供資料作商業用途 Any reproduction, adaptation, distribution, dissemination or making available of the data for commercial purpose is strictly prohibited
土地註冊處 Land Registry	查閱土地紀錄 Search of land records	方便進行物業交易的人士確定誰是有關物業的註冊業主和該物業是否有已註冊的轆轤 Enabling parties to property transactions to ascertain who is the registered owner of the property in question and what incumbrances, if any, are registered against it	資料不得用作任何抵觸私隱條例的活動或目的 Data shall not be used for any activity or purpose in violation of the Personal Data (Privacy) Ordinance
運輸署 Transport Department	申請「車輛登記細節證明書」 Application for a Certificate of Particulars of Motor Vehicle	查閱車主的個人資料，以處理運輸及交通事項 The permitted use of the vehicle owners' personal data should relate to transport-related issue	申請查閱者須填報查閱的目的；如在申請中虛報資料屬觸犯罪行 Applicants for data should specify the purpose of the application. They may commit an offence if they knowingly make a false statement in the application
婚姻註冊處 Marriage Registry	展示擬結婚通知書(載有新人提供的部分個人資料)最少15天 Display of Notice of Intended Marriage (part of the personal data supplied by the marrying parties is to be exhibited) for at least 15 days	容許獲法例授權的人士提出反對 Enabling any person authorised by law to object to the proposed marriage	
司法機構 Judiciary	張貼於法院及審裁處告示板的審訊案件表 Daily Cause Lists posted on notice boards at courts and tribunals	通知訴訟當事人及公眾人士應訊及聽審時間和地點 Facilitating litigants, witnesses and members of the public to attend designated courts at the right time	案件表於審訊結束翌日銷毀 Destroyed one day after the trial is over
破產管理署 Official Receiver's Office	在政府憲報及報章刊登破產令 Bankruptcy Order advertised in the Gazette and two newspapers	讓公眾得悉有關人士已破產或解除破產日期，在破產期間如要向該人士償還債項，須將款項交予受託人 Letting the public know when the named person was bankrupt or had been discharged, and all debts due to the bankrupt should be paid to the trustee during the bankruptcy period	訂明資料只限用作處理該破產案的事宜 The data can only be used for the purposes of the bankruptcy cases
政府 The Government	政府及有關機構電話簿 Telephone Directory of the Government and Related Organisations	方便市民與政府及有關機構作公務上的通訊 Facilitating official communication between the Government and related organisations and the public	不可用作直接促銷用途或轉予他人以獲取商業利益 The information is not intended for direct marketing activities and should not be transferred for commercial gains

個案：GDI透過「起你底」手機程式供用戶搜尋目標人物的訴訟和破產紀錄

Case: A company enabled search of target persons' litigation and bankruptcy records through the mobile app "Do No Evil"

公署於8月13日發表調查報告，指出 Glorious Destiny Investment (GDI) 透過「起你底」手機應用程式，供安裝程式的用戶用姓名搜尋目標人物的訴訟案件及破產資料，私隱專員總結時指出GDI嚴重侵犯資料當事人的私隱。

公署於去年接獲12名市民投訴「起你底」侵犯其個人資料私隱，約60人曾向公署查詢及表示關注。公署遂展開調查，確立案中的資料使用者是資料庫營運商GDI。

調查發現，GDI的人員日常從司法機構、破產管理署、憲報及公司註冊處等不同途徑收集個別人士的訴訟、破產及公司董事資料，以輸入其資料庫，然後透過手機程式讓用戶利用姓名或地址索引，從該資料庫中搜尋某人的訴訟及破產案資料。該程式的宣傳推廣以方便市民為招聘員工，以至家庭教師或傭工；處理物業租務或商業交易而進行盡職審查及背景審查作招徠。

一年間，有逾四萬人次下載「起你底」，索閱資料次數超過20萬。

問題癥結是該程式的資料庫所提供的資料並不準確，甚至有些資料經已失效。首先用戶在「起你底」程式輸入目標人物姓名後，搜尋結果會顯示同名同姓或近似的姓名，用戶有可能誤將「馮京作馬涼」。其次，牽涉訴訟的人可能最終被判無罪或申索不成立，但該資料庫未必把法庭最後的裁決納入其中。第三，破產令通常在4至8年後可以獲得解除；輕微罪行的犯罪者如在3年內沒有再被定罪，在法律下他可被視為沒有就該項罪行被定罪。資料庫無限限期地保留和披露當事人的破產及訴訟資料，可能造成不當的標籤效應，影響當事人重過正常的生活。



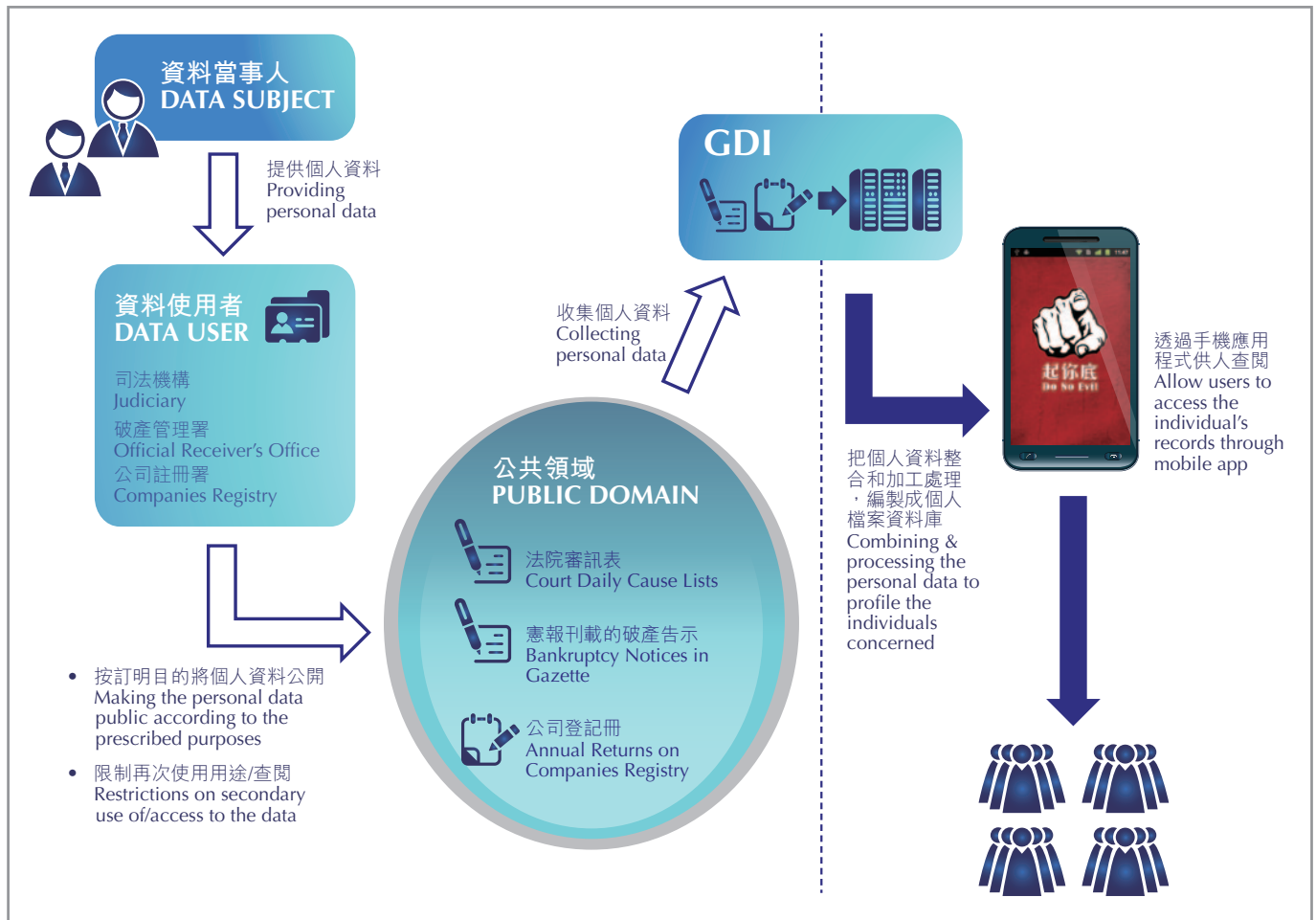
政府部門公開訴訟和破產紀錄予市民查閱，一般設有特定目的（見表一），而有關目的顯然不包括配合GDI的商業運作，以供一般消費者在目標人物不知情的情況下進行背景審查，從而決定是否聘用當事人或查核其信貸能力。縱使公眾人士可憑這些公開的紀錄識辨某人是否訴訟和破產案件的當事人，但有關部門備存的檔案庫，並不設姓名查冊服務。該程式把收集得的公開個人資料整合和編纂，實際上已構成使用資料的新目的，而且該新目的超越資料當事人的合理期望，與保障資料第3原則相悖。

私隱專員於2013年7月31日發出執行通知，指令GDI停止向「起你底」程式用戶發佈其持有的個人訴訟及破產資料，GDI已於8月7日起遵從指令。[P](#)

調查報告：www.pcpd.org.hk/chinese/publications/files/R13_9744_c.pdf

The PCPD published an investigation report on 13 August 2013 on the case of the company Glorious Destiny Investment (GDI), which designed a smartphone application known as "Do No Evil" ("the App"), that enabled people who downloaded the App to search by name a target individual's litigation and bankruptcy data. Privacy Commissioner concluded that GDI had seriously invaded the privacy of the individuals concerned.

The PCPD received 12 complaints against the App for intrusion of personal data privacy, and enquiries and expressions of concern from 60 people. The PCPD therefore initiated an investigation, and ascertained that the responsible data user in the case was GDI, the operator of the database.



It was found that GDI had collected individuals' litigation, bankruptcy and company directorship data from different sources, including the Judiciary, the Official Receiver's Office ("ORO"), the Gazette and the Companies Registry, and formed a database. The App enabled users to search the database for an individual's litigation and bankruptcy data by his name or address. The App publicised that it could be used to conduct due diligence review and background check for decisions involving the offer of a job to a potential employee, including a private tutor and a domestic helper; signing tenancy agreements with prospective tenants; or signing contracts with business partners. In a year's time, the App had more than 40,000 downloads, and more than 200,000 search requests.

Importantly the App's database is invalid and inaccurate. First, as litigation records are not associated

with unique identification numbers, it could be misleading to ascribe them to an individual whose name is not unique. Further, a litigant could be innocent but the database did not invariably include the court's judgement. Finally, bankruptcy is discharged after four to eight years and the Rehabilitation of Offenders Ordinance prevents unauthorised disclosure of a minor conviction provided the offender is not reconvicted in the subsequent three years. Therefore, the indefinite retention and use of the bankruptcy and litigation data would unduly stigmatise an individual and bar him from leading a life free from encumbrances.

The litigation and bankruptcy records are made publicly available by the government authorities for specific purposes (see Table 1) which clearly do not include supporting GDI's commercial venture to assist general consumers to check out

target persons behind their backs for making decisions on employability and creditworthiness. In practice, while these public records enable identification of individuals involved in litigation and bankruptcy cases, they do not facilitate record search by their names. Through value-added aggregation and processing of personal data, the App has in effect created a new purpose of use of the data in the public domain which exceeds the reasonable expectation of the data subjects. This is not permissible under DPP3.

Privacy Commissioner issued an Enforcement Notice to GDI on 31 July 2013, directing it to cease disclosing the litigation and bankruptcy data it held to the App users. GDI complied with the directive on 7 August 2013. [P](#)

Investigation Report: www.pcpd.org.hk/english/publications/files/R13_9744_e.pdf

有問有答：使用已公開的個人資料

Questions and Answers: On the use of publicly available personal data

問1： 從法院、破產管理署、公司註冊處等機構查閱別人的個人資料，以及儲存所得的資料，是否有違私隱條例？

答1： 除一些特殊情況外，市民從這些來源收集、查閱和儲存公開的個人資料，一般來說並無不妥。問題是如何再次使用該等資料，以及使用形式是否構成了新目的，而新目的又是否超出資料當事人的同意範圍或超出其合理期望。

任何人從公共領域取得個人資料，然後再使用時，必須與最初收集和公開資料的目的一致，或者直接有關。若為新目的而把資料重整和再使用，要事前得到當事人的明確同意。這是私隱條例之下的要求。

問2： 何謂將取自公共領域的個人資料的使用目的改變，可否舉例說明？

答2： 土地註冊處讓物業交易的相關人士查閱土地登記冊，以確立物業業主的身分。若有人在土地註冊處查冊後，把所得的資料加工處理製成資料庫，供人搜尋個別人士持有多少物業和有關物業的詳情，即對個人資料的使用賦予新目的，有違條例規定。



問3： 存在於公共領域的敏感個人資料，例如香港身份證號碼，是否任人收集和使用？

答3： 查閱公開的資料並無不妥，但如果你將這些個人資料匯集和加工處理，形成新的用途，偏離了原初收集和公開該等資料的目的，便可能抵觸私隱條例。

公署早前對一個網站營運者進行循規審查，該營運者採取合作態度，迅速停止了索引的運作。該索引把公共領域搜尋到的姓名及身份證號碼編纂排序，方便以

姓名或身份證號碼作索引互相搜查。如此地把敏感個人資料整合及處理，明顯是不恰當及不可以為人接受的，因為會增加當事人身份被盜用，蒙受滋擾或經濟損失的風險。

問4： 互聯網搜尋器的運作，私隱條例又是否可容許？

答4： 一般而言，互聯網搜尋器公司只是提供資訊的中介，將不同網頁的資訊向用戶一併顯示，搜尋器公司只提供不同網頁的內容，而沒有再重整個人資料而形成新的用途。





問5： 利用科技在網上整合資料庫或名單，可讓用戶方便快捷地查閱資料，公署就「起你底」調查所作的決定是否扼殺了資訊科技界的創意和發展？

答5： 私隱條例對資訊科技發展是中立的。科技帶來生活上的方便，提升效率和效益，但這些好處絕對不是侵犯他人權利的理由。不論是大企業抑或小公司，應用新科技的前提是守法。

要判斷某個案是否有侵犯他人私隱之嫌，可考慮資料當事人就其個人資料的使用的合理期望。合理期望的測試即是「將心比己」，如果你是資料當事人，你會否認為資料的新用途是意料之外，不恰當和反感。

問6： 個人資料供公眾人士查閱，已經公諸於眾；私隱條例的規管是否限制了資訊流通和公眾的知情權？

答6： 私隱權是基本人權。自《個人資料(私隱)條例》於1996年實施，所有資料使用者在法律上有責任保障個人資料。惟私隱條例只適用於「個人資料」；是公共領域中的一部分的資料而已。說私隱條例與資訊自由有直接衝突，未免言過其詞。

不過，個人資料私隱權也不是絕對的，還要考慮與其他權利平衡，包括資訊自由和公眾知情權等，私隱條例第VIII部的豁免條文已經顧及這平衡的需要。

問7： 為何律師樓可以提供起底服務，而手機程式則被視為違規？

答7： 律師樓和手機程式提供的背景審查服務運作方式不同，兩者並不可相提並論。公署是基於市民的投訴而對有關手機程式展開調查。

坊間各適其適的個人背景審查服務，不論是由律師樓或其他機構營運，是否違規，不能一概而論，要考慮個別案件的具體案情後，甚至作詳細調查後才可作判斷。

客觀來說，律師樓以一對一方式提供專業法律意見服務，法律人員理應知道法律容許和不容許哪些做法，並提醒客戶得到的資料並不完善，以及會再查找以務求資料盡量準確和完整。律師亦有機會引用私隱條例第60B條(法律程序)的豁免安排。

上述手機程式的搜尋服務則是一點對多點毫無限制地發放資料；資料庫營運者難以控制用戶怎樣再使用不完整和不準確的訴訟和破產資料。

問8： 資料庫營運商GDI除了向手機程式供應資料外，亦有用同一資料庫以網上搜尋的形式提供背景審查服務，又是否符規？

答8： 在調查期間，公署得悉涉案GDI除了向「起你底」程式供應資料外，亦有用同一資料庫以其他模式提供背景審查服務。儘管公署沒有收到相關投訴，亦已經就GDI的其他背景審查服務主動展開循規審查，以了解GDI在處理個人資料方面的做法，是否遵從《個人資料(私隱)條例》的規定。

基於循規查察行動未完成，公署對於「起你底」以外，其他GDI的業務運作暫時不予置評。

問9： 有網站披露「凶宅」地址，此舉有否違法？

答9： 要分清楚是否牽涉個人資料。若凶宅網站只披露單位的地址、單位發生過的事件而沒有個人資料，則條例不適用。

問10： 近年也興起所謂「人肉起底」，目標人物被網民公開個人資料，這又是否誤用公共領域的個人資料？

答10： 網上世界可以是無限的，在網上發放、轉載，查閱某目標人物的個人資料，從而對當事人構成不利的影響，後果深遠，可能涉及失實資料發佈、誹謗、網上欺凌、恐嚇、知識產權等等，牽涉其不同的法例和執法機關，個人資料私隱只是其中一環。公署會考慮個別案件的情況以作判斷，但建議市民尊重他人個人資料的私隱。PI

公署建議資料使用者參考《使用公共領域個人資料指引》。

www.pcpd.org.hk/chinese/files/publications/GN_public_domain_c.pdf

Q1: Is it a contravention of the Ordinance to obtain personal data held by the Judiciary, Official Receiver's Office or Companies Register and keep the data?

A1: Subject to some limitations, there is generally no problem for members of the public to collect, access and keep such personal data. At issue is the secondary use of that personal data and whether the further use constitutes a new purpose of use which exceeds what the data subject has consented to or his reasonable expectation.

Anyone who obtained personal data from the public domain must use the data for a purpose which is consistent with, or directly related to, the original purpose for which it is collected and made public. If the personal data is processed for a new purpose, the prior consent of the data subject must be obtained. This is the requirement under the Ordinance.

Q2: Could you give an example of change of use of personal data obtainable from the public domain?

A2: The Land Registry facilitates search of land records which enable parties to property transactions to ascertain the identity of the property owner. However, if someone gathers records from the Land Registry and processes them so as to facilitate users to search

for the number and details of properties an individual owns, the act would create a new purpose of use of the personal data not permissible under the Ordinance.

Q3: The public domain contains sensitive personal data such as Hong Kong Identity Card numbers. Could one freely collect and use these data?

A3: It is acceptable to access publicly available personal data. But performing value-added operations on the personal data, such as combining and processing, may create a new use of the data which deviates from the original purpose of collecting the data and making it public, and would thus contravene the requirements of the Ordinance.

The PCPD recently secured the cooperation of a website operator to cease operating an index which listed the names and HKID numbers of individuals found in the public domain to enable a search by either name or HKID number. Such aggregation and processing of sensitive personal data is clearly inappropriate and objectionable from the perspective of the data subject, as it enhances the risk of identity theft, causing administrative nuisance or financial loss to the affected persons.

Q4: Is the operation of Internet search engine acceptable under the Ordinance?

A4: Generally speaking, search engines act merely as intermediaries and only provide a tool for web users to gather information dispersed in various websites. In this manner, the search engine operators are providing content data rather than creating a new use of the personal data which is found in various websites.

Q5: Technology has made it easier than ever to create online databases/listings which provides convenient search services. Did the PCPD's decision on the 'Do No Evil' case mean to convey a message that the creativity and development of the IT technology should be suppressed?

A5: The Ordinance is technology-neutral. Technology provides convenience, efficiency and effectiveness, but this is not a justification for intrusion into the privacy of individuals. Be it a big corporation or a small business, compliance with the law should always be part and parcel of an application of new technology.

To determine whether it is an intrusion on personal privacy, we may look at the reasonable expectations of the data subjects on how their personal data will be used. The test of reasonable expectation is simply to put yourself in the data subject's shoes and ask whether you would find the re-use of the data unexpected, inappropriate or otherwise objectionable.



Q6: The so-called personal data in the public domain is already publicly available. Does the Privacy Ordinance aim to curtail the free flow of information and the public's right to know?

A6: Privacy is a fundamental human right. Since the enactment of the Ordinance in 1996, it has been a legal obligation on the part of all data users to protect personal data. The Ordinance applies to personal data, which is only part of the data that is available in the public domain. To say that the Ordinance is in direct conflict with free flow of information is an over-statement.

Nevertheless, data privacy is not absolute. One should balance this right with other rights, including freedom of information and the public's right to know. Such balance is reflected in the exemptions listed in Part VIII of the Ordinance.

Q7: Why does the Ordinance allow a law firm to provide a background search service while ruling against a mobile app version?

A7: This is an orange to apple comparison. In the case of the App we have concluded an investigation in response to a number of complaints.

We cannot say whether in general a background search service run by a legal firm or any other operator is proper or not. Each case has to be determined on its own merits as assessed in a detailed investigation.

Objectively, law firms provide one-to-one professional service. Lawyers are expected to know what can be done legally and what cannot, advise their clients on the limitations of the information in their possession and carry out specific checks to ensure as far as possible the accuracy and comprehensiveness of the information. They may additionally consider if the exemption of the Ordinance e.g. section 60B (legal proceedings) may apply.

The search service through the App referred to above is a one-to-many service; GDI cannot control how end users use the incomplete and inaccurate litigation and bankruptcy data it provides.

Q8: In addition to providing litigation and bankruptcy records through the smartphone app, GDI runs a web-based data search service with similar features. Is it legal?

A8: During the course of the investigation into the operation of the App, the PCPD learnt that GDI also provided litigation and bankruptcy data through other channels with the same database. Although no complaint had been received in this regard, the PCPD had commenced a compliance check against GDI to appraise the situation and to ensure that the parties concerned comply with the requirements under the Ordinance.


Before the compliance checks are completed, the PCPD cannot offer a comment on any of GDI's operations other than the "Do No Evil" app.

Q9: There are some websites providing listings of "reportedly haunted residential sites". Does this constitute a contravention of the Ordinance?

A9: It is important to look at whether personal data is involved in the case. If the listing includes only the addresses and the incidents which took place on the sites, but no personal data, the Ordinance does not apply.

Q10: Cyber-profiling. Is it a misuse of personal data obtained from the public domain for web users to provide personal data of an individual?

A10: Cyberspace is boundless. The acts of publishing, reproducing and accessing the personal data of targeted individuals in an unfavourable light can be a far-reaching issue. It may entail a range of concerns, such as misrepresentation, libel, cyber-bullying, blackmail, intellectual

property rights, and involve different legislations and law enforcement agencies. Privacy rights with respect to personal data may be only part of it. Each case has to be determined on its merits. The PCPD advises everyone to respect each other's right to data privacy. 

Data users are advised to refer to the Guidance Note *Use of Personal Data Obtained from the Public Domain*.

(www.pcpd.org.hk/english/files/publications/GN_public_domain_e.pdf)

物業管理的資料保障

Data Protection in Property Management

公署與香港物業管理公司協會合辦的「物業管理業保障私隱活動」於今年3月圓滿結束，這項為期六個月的活動得到21間物業管理公司響應，各自在機構組織保障個人資料的相關培訓，期間共有1,600多名物業管理從業員參加。我們請來富城物業管理有限公司代表分享參與這項活動的心得。

The Privacy Campaign for the Property Management Industry, jointly organised by the PCPD and the Hong Kong Association of Property Management Companies (HKAPMC), ended in March this year. The six-month campaign gained support from 21 property management companies, which organised training programmes on data protection for their employees, attended by more than 1,600 practitioners. We talked to the representative of the Urban Group to see how she regarded the campaign.



P: 本刊訪問員
UG: 富城集團
高級集團經理－
人力資本鄭安淇女士

P: PCPD News interviewer
UG: Ms Cheng On Ki Janna,
Senior Group Manager –
Human Capital,
Urban Group

物業管理行業涉及大量住戶的個人資料，我們都十分著重保障私隱，公司為員工制定了多項保障個人資料的守則

P: 參與「物業管理業保障私隱活動」，是否有助機構推動保障個人資料私隱的文化？

UG: 在「物業管理業保障私隱活動」推展期間，富城與公署協辦了兩次講座，有百多名企業管理層及物業主管參與，除了講解條例，講者引用有關物管的例子，以及同事們現場提問，這種互動的形式有效地將相關知識傳達給前線服務的員工。再加上公司的配合及不斷推動，有效地建立了保障個人資料私隱的機構文化。

公司本身是公署的保障資料主任聯會(DPOC)會員，DPOC的通訊和活動讓我們緊貼條例的更新和發展趨勢。與同事分享這些資訊亦有助他們於日常工作時更關注及謹慎處理住戶、僱員、到訪者及

其他持份者的私隱問題，從而提升服務素質和更趨專業。

P: 貴機構有沒有為前線員工(物業管理人員)制訂保障個人資料的守則？如有，守則涵蓋哪些方面？

UG: 物業管理行業涉及大量住戶的個人資料，我們都十分著重保障私隱，公司為員工制定了多項保障個人資料的守則：

在收集應徵者個人資料時，清楚說明收集資料的目的和資料保存的期限。未獲受聘者的資料，會在完成整個招聘程序後定時銷毀，以確保資料不會外洩。

每位同事入職時都會獲發「僱員手冊」或「僱員紀律手冊」，手冊內容

清楚說明六大保障個人資料的原則，以及建議員工處理機密資料(如個人資料)時的做法，令同事們明白到保障資料私隱的重要性。我們更為員工制定了「個人資料使用者指引」，以作為他們在收集和保存個人資料時的工作參考藍本。

P: 貴機構如何推動前線員工認識和實踐保障個人資料私隱？

UG: 除了書面的指引，各物業管理人員每日執勤前的簡報會，亦是提醒同事們注意個人資料私隱的重要平台，提醒前線員工在工作時應注意的地方，以增強對個人私隱的認知，亦指導他們正確處理資料的方法。

在確保員工能實踐保障個人資料私隱方面，公司有不同的監察團隊和制度，如夜巡隊作突擊檢查，檢視前線員工有否按程序處理個人資料。另一方面，我們會進行多個年檢及審計，如內部年檢，國際標準化組織年檢，和香港警務署的保安公司監察小組年檢等，以確保相關守則能夠有效落實。

P: 有沒有一些實際例子可以分享，如何令員工將遵從條例要求的意識融入日常工作裡，並且明白尊重個人資料私隱對機構和客戶的好處？當中有何挑戰？

UG: 前線員工著重物業保安之餘，亦要確保訪客私隱。例如我們建議前線員工在記錄訪客資料時避免使用列表式的登記簿，取而代之，每次用一張全新表格供訪客填寫，以免訪客資料不慎外洩。

隨著公眾對個人私隱和自身權益的關注提升，前線員工在收集訪客資料時會遇上一定困難，例如訪客不願隨便提供身份證號碼以作登記，我們的員工需要向訪客解釋資料收集的目的，務求收集到所需資

料。若訪客堅拒提供個人資料，前線員工會用其他方法如親自引領訪客到大門外，用對講機與住戶聯絡，以核實訪客的身份才讓他進入大廈，以確保住客的安全。

P: 期望個人資料私隱專員公署在這方面如何配合業界?

UG: 期望公署為公眾舉行更多講座和活動，以及與機構緊密合作，讓市民有更多機會認識保障個人資料和私隱條例，尤其是在物管界常見的情況，促進個人資料當事人和資料使用者了解彼此的立場和要求。P

P: How did this industry-specific campaign help promote a privacy-respectful culture in your organisation?

UG: During the campaign, the Urban Group, with support from the PCPD, organised two talks for more than 100 senior executives and supervisors of property management services of our company. The introduction of the requirements under the Ordinance, coupled with vivid examples of how they apply to our industry and the interactive Q&A sessions turned out to be an effective way to transfer this knowledge to

Property management involves handling a great deal of personal data of our tenants. We respect their right to privacy, so we provide staff with guidelines like these

frontline employees. Supported by an organisation-wide policy, we did manage to start creating a privacy-respectful culture in our company.

Our company is a member of the Data Protection Officers' Club (DPOC), and through DPOC communications and activities, we are able to keep abreast of developments in the Ordinance and trends in data privacy protection. We are pleased to share all this information with our colleagues, as it is good reference for them to better understand the privacy concerns which may arise from their daily work when they handle the personal information of tenants, staff, visitors and other stakeholders. In many ways, this helps to improve the quality and professionalism of our service.

P: Have you drawn up any guidelines or codes for frontline staff? If so, what do the guidelines cover?

UG: Property management involves handling a great deal of personal data of our tenants. We respect their right to privacy, so we provide staff with guidelines like these:

Before or when collecting personal information, they must clearly state why the information is being collected and how long it will be kept. Regarding recruitment, the personal data of the candidates not recruited is deleted within the prescribed period of time in order to ensure no data leakage.

Every new member of staff is assigned a copy of our Employee Handbook and Employee Code of Conduct, which explains the six Data Protection Principles and what to do when handling confidential data (such as personal data). That's how we make staff realise the importance of safeguarding data privacy.

We also produced a pamphlet called 'Guidelines on the Use of Personal Data' for staff reference with respect to standard procedures for collecting and keeping personal data.

P: How do you promote understanding and good practices of personal data protection among your frontline staff?

UG: The written policies and guidelines are useful tools. Our daily briefings for property management staff including security guards on site is another important channel for us to remind staff of things that they



公署人員主持培訓講座，向從業員講解條例的規定、剖析與業界相關的個案，並解答他們在工作上遇到的資料保障循規問題。

The PCPD organised training seminars to explain the requirements under the Ordinance from industry's perspective, analyse related cases and answer questions about data protection.



為業界製作簡易實用的海報，提醒物業管理從業員在工作中應注意有關保障個人資料私隱的事項。An educational poster providing practical tips for property management practitioners on safeguarding personal data privacy was produced. 下載Download: www.pcpd.org.hk/chinese/activities/files/notice.pdf

are expected to pay extra attention to. This communication helps them to brush up their privacy knowledge and learn appropriate ways to deal with privacy issues.


In order to make sure the policies and procedures are well observed, we have a built-in monitoring system. For example, a special task force carries out random on-site night inspections. We also conduct regular audits and inspections, such as internal audits, ISO compliance audits and an annual inspection conducted by the Security Company Licence Inspection Unit of the Hong Kong Police Force.

P: Is there any example you can share with us to illustrate how you encourage frontline staff to inculcate a respect for personal privacy into their routine work and to realise that respecting data privacy is beneficial to both the company and your tenants? What are the challenges?

UG: When ensuring the safety of the premises, frontline staff also need to ensure that the privacy of visitors is protected. For example, we suggest security staff use separate forms for individual visitors to fill in their information for entry purposes. This is preferred to the conventional form in which all visitors' information is exposed to everyone who signs in after them.

As awareness of the right to personal privacy increases, our frontline staff have encountered certain difficulties in collecting personal information from visitors. Some visitors may not want to give their identity card number for registration. In those cases, our staff explain in detail to the visitors the purpose of the data collection in the hope of eliminating their concerns. But if visitors insist on not giving such information for registration purposes, our staff have to accompany the visitor to the intercom system at the entrance and ask the tenant to verify the identity of the visitor.

P: What kind of support would you like to see the PCPD provide to the industry?

UG: I would like the PCPD to organise more talks and activities, and to work closely with organisations in order to promote public understanding of data protection and the requirements under the Ordinance, in particular responding to the concerns in the property management industry. Mutual understanding between data subjects and data users is important. 

未有小心考慮豁免條文而拒絕查閱資料要求

Refusal of data access requests without carefully considering whether the relevant exemptions under the Ordinance were applicable

兩名教師(投訴人)要求查閱校方對他們作出紀律處分的紀錄中的個人資料。校方以有關資料獲豁免於條例第58(1)(d)、(e)及(f)為理由拒絕。投訴人不滿，遂向公署投訴學校。

結果：投訴得直

私隱專員在考慮條例第58(1)條(d)款是否適用時認為，案中投訴人受紀律處分所涉及的行為，並不算是「嚴重不當行為」，而有關處分亦只是警告。

校方認為披露有關文件予投訴人，會對學校教職員的士氣及運作帶來負面影響。但是專員亦指出，校方聲稱向投訴人披露有關資料會令學校蒙受的所謂「損失」，與第58(1)條(e)款所指的「嚴重經濟損失」相距甚遠，故此豁免不適用。

校方亦無法證明兩位投訴人的不當行為對學校管理的法定運作造成嚴重的負面影響，專員認為學校引用第58(1)(f)的理據不足。

私隱專員發出執行通知，指令學校依從投訴人的查閱資料要求，並修訂學校處理查閱個人資料要求的指引。校方接受，並已遵從上述指令。P

Two teachers (the Complainants) made data access requests (“DARs”) to a school for their personal data contained in documents about the school’s disciplinary action against them. The school refused the DARs on the ground that the requested data was exempt under sections 58(1)(d), (e) and (f) of the Ordinance. The Complainants were dissatisfied with the school’s replies and lodged complaints with the PCPD.

Outcome: Complaint Upheld

Privacy Commissioner held that, in respect of the applicability of section 58(1)(d) of the Ordinance, the behaviour of the Complainants did not amount to “serious improper conduct” as the disciplinary action concerned was just a warning.

The school submitted that disclosure of the concerned documents to the Complainants would adversely affect the morale of teaching staff and the function of the school. However, the Commissioner considered that the “loss” the school claimed was too remote from “significant financial loss” and did not satisfy the requirement of section 58(1)(e).



Likewise, the school had failed to prove how the misconduct of two teachers would have a significant adverse impact on the school’s statutory function of school management. The Commissioner consequently dismissed the ground for exemption under section 58(1)(f) of the Ordinance.

An Enforcement Notice was served on the school directing it to comply with the DARs and devise guidelines for handling DARs from its staff. The school agreed with the directions and complied with the Enforcement Notice accordingly. P

條例第58(1)條

為以下目的持有個人資料，可獲豁免而不受第6保障資料原則及第18(1)(b)條的條文所管限。

- (d) 任何人所作的非法或嚴重不當的行為、或不誠實的行為或舞弊行為的防止、排除或糾正(包括懲處)；
- (e) 防止或排除因(i)任何人輕率的業務經營手法或活動；或(ii)任何人所作的非法或嚴重不當的行為、或不誠實的行為或舞弊行為，而引致的重大經濟損失；
- (f) 確定有關的資料當事人的品格或活動是否相當可能對以下事情有重大不利影響：(i)由該資料使用者執行法定職能所關乎的事情；或(ii)與本段憑藉第(3)款而適用的職能的執行有關的事情

Section 58(1) of the Ordinance

Personal data held for the purpose of –

- (d) the prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons;
- (e) the prevention or preclusion of significant financial loss arising from (i) any imprudent business practices or activities of persons; or (ii) unlawful or seriously improper conduct, or dishonesty or malpractice, by persons;
- (f) ascertaining whether the character or activities of the data subject are likely to have a significantly adverse impact on anything (i) to which the discharge of statutory functions by the data user relates; or (ii) which relates to the discharge of functions to which this paragraph applies by virtue of subsection (3)

are exempt from the provisions of data protection principle 6 and section 18(1)(b) ...

調查報告：預防協會與翔匯策劃以儼如欺詐手法收集市民資料作促銷之用

Investigation Report: HKPA & Aegon Direct collected personal data for use in direct marketing by arguably deceitful means

公署在2013年4月9日發表調查報告，指香港預防協會有限公司與翔匯保險策劃有限公司以誤導及儼如欺詐的手法，收集市民的個人資料，並用以進行促銷，違反條例的個人資料保障原則。

多名市民向公署作出投訴，指預防協會以「響應全民醫療體檢計劃」為名，在電話中要求市民提供部分身份證號碼及流動電話號碼等個人資料以登記免費驗身服務。實際上，投訴人的資料被轉售給翔匯策劃，投訴人其後收到翔匯發出的保險產品推銷資訊。

調查指出，預防協會沒有在電話中向投訴人明確交代擬將他們的個人資料交給翔匯策劃作直接促銷用途。翔匯策劃在未得投訴人同意，而使用其個人資料促銷保險產品，以及不必要地收集身份證號碼；兩間機構均違反了收集和使用方面的保障資料原則。

經公署介入後，翔匯策劃已停用投訴人的個人資料作促銷，並已銷毀他們的個人資料，及其他未有向翔匯策劃購買保險產品的人士的部分身份證號碼。不過，為了糾正違例事項，以及防止違例的事宜再發生，私隱專員已分別向預防協會及翔匯策劃送達執行通知，指示兩間公司制訂保障個人資料的政策及程序。翔匯策劃已在今年9月30日的期限前，銷毀所有在涉案推廣計劃下從預防協會取得的個人資料。P

調查報告：www.pcpd.org.hk/chinese/publications/files/R13_1138_c.pdf

An investigation report published by the PCPD on 9 April 2013 revealed that the Hong Kong Preventive Association Limited ("HKPA") and Aegon Direct Marketing Services Insurance Broker (HK) Limited ("Aegon Direct"), in a joint telemarketing programme, had collected

personal data from the public in a misleading and arguably deceitful way, thus breaching the data collection and use requirements under the Ordinance.

Several persons complained to the PCPD that the HKPA had collected their personal data, such as partial identity card numbers and mobile phone numbers, over the phone for the purpose of signing up for a free medical check-up service that was said to be in support of a "Universal Medical Check-up Scheme". Subsequently, their data was sold to Aegon Direct and they received direct marketing messages from Aegon Direct in relation to insurance products.

The Investigation found that the HKPA telemarketers had not explicitly informed the complainants of the intended transfer of the data to Aegon Direct for use in direct marketing and that Aegon Direct had used their personal data in direct marketing of its insurance products without obtaining their consent. The

two companies contravened the Data Protection Principles on the collection and use of personal data.

After the PCPD's intervention, Aegon Direct ceased using the complainants' personal data in its direct marketing approaches, and destroyed the records of their personal data, as well as the records of the partial identity card numbers of other direct marketing targets who had not purchased any insurance products through Aegon Direct. However, in order to remedy the contraventions and prevent any recurrence, the Privacy Commissioner served an Enforcement Notice on both companies, and directed both companies to draw up data protection policies and procedures. Also, Aegon Direct had destroyed the personal data it obtained from HKPA by 30 September 2013. P

Investigation Report: www.pcpd.org.hk/english/publications/files/R13_1138_e.pdf



港鐵閉路電視系統視察報告

Inspection of the MTR's CCTV system concluded

公署在2013年4月9日就視察港鐵車站公眾地方及列車車廂的閉路電視系統發表報告，總結港鐵系統大致上遵從條例規定，惟港鐵在安裝系統前沒有進行全面的私隱風險評估；在裝有攝錄鏡頭的地方向乘客展示的告示有欠清晰；於處理和銷毀錄影片段方面的政策制訂及推行方面亦有所不足，有可改進之處。P

視察報告：www.pcpd.org.hk/chinese/publications/files/R13_2768_c.pdf

On 9 April 2013, the PCPD published an inspection report of the Closed-Circuit Television System ("CCTV system") used by the MTR Corporation ("MTRC") in train stations and compartments. The report concluded that the system complied with the requirements of the Ordinance, but that improvements were needed on the content and visibility of the CCTV notices, as well as in the

enforcement of MTRC's policy on the handling and erasure of the CCTV records and footage. The report pointed out that a privacy impact assessment should have been done before the system was introduced. P

Inspection Report: www.pcpd.org.hk/english/publications/files/R13_2768_e.pdf

社交網站用戶對保障私隱意識知而不行

Few Facebook users act on their knowledge of privacy protection on Facebook

公署於2013年4月25日公佈一項以本港Facebook用戶為對象的私隱意識調查結果顯示，近八成受訪者知道如何使用Facebook上的閱覽權限設定，以保障個人資料的私隱，但不足四成人付諸行動。調查又發現15至20歲的青年人對社交網上外洩私隱的危機意識最低。P

《社交網站Facebook的私隱意識研究調查》報告www.pcpd.org.hk/chinese/publications/files/facebook_survey_e.pdf

[publications/files/facebook_survey_e.pdf](http://www.pcpd.org.hk/chinese/publications/files/facebook_survey_e.pdf)

On 25 April 2013, the PCPD revealed the results of a survey on local Facebook users. It was found that over 80% of the respondents knew how to set access right to protect their personal data on their Facebook accounts, but less than 40% did so. Young people aged between 15 and

20 were found to have least concern about the risk of losing control over their personal data on social networking sites. P

Report on Privacy Awareness Survey of Facebook Users: www.pcpd.org.hk/english/publications/files/facebook_survey_e.pdf



亞洲私隱學術會議

Asian Privacy Scholars Network Conference

私隱專員蔣任宏先生於2013年7月8日在香港大學法律學院舉行的第三屆亞洲私隱學術會議上發表專題演說，題目為「查閱公共領域資料與保障個人資料之間的平衡」。P

Privacy Commissioner Mr Allan Chiang delivered a keynote speech on 8 July 2013 on the topic of “Balance Between

Access to Public Domain Information and the Protection of Personal Data” at The Third Asian Privacy Scholars Network Conference organised by the Faculty of Law, The University of Hong Kong. P

私隱及資料保障法律獎學金

Scholarship for Study on Privacy and Data Protection Law

公署由2012年起與香港大學法律學院合辦獎學金，鼓勵法律系學生關注個人資料私隱這個課題。今年，香港大學法律系LLB學生謝昇餘以「私隱保障於網絡時代的挑戰(Challenges of Privacy Protection in the Internet Era)」為題的作品脫穎而出。

謝昇餘分享得獎心得：「我本身喜歡上網，而網上活動很多時會牽涉暴露個人資料和私隱，令我對這題目特別感興趣。我由資料搜集，參考外國文獻，到撰寫文章，用了一個多月，這是一個很好的學習過程。」P

The PCPD and the Faculty of Law, The University of Hong Kong (“HKU”) jointly set up a Privacy Commissioner Prize in Privacy and Data Protection Law scholarship in 2012, with the objective of encouraging law students to study data privacy issues. This year, Hades Tse, a HKU LLB student, won the prize with

his research paper *Challenges of Privacy Protection in the Internet Era*.

Hades shared his thoughts: “As a keen Internet surfer, I came to realise that many online activities may affect our personal data and privacy. The topic of the competition was exactly the focus of my interest. From collecting information and doing the literature review to write-up, I spent one month on the project, which was a very fulfilling learning experience for me.” P

香港大學法律系LLB學生謝昇餘以「私隱保障於網絡時代的挑戰(Challenges of Privacy Protection in the Internet Era)」為題的作品脫穎而出。Hades Tse, a HKU LLB student, won the prize with his research paper *Challenges of Privacy Protection in the Internet Era*.



關注私隱運動2013 (4月28日 – 5月4日) Privacy Awareness Week 2013 (28 April – 4 May)

「關注私隱運動」是公署與其他亞太區私隱機構成員合辦的年度大型推廣活動，今年參與地區包括澳洲、加拿大、澳門、墨西哥、新西蘭、韓國及美國。

香港的「關注私隱運動2013」主題是「網上私隱要自保」，提醒市民在科技急速轉變及社交媒體盛行的今天，如何保障個人資料私隱。「關注私隱運動」獲得44間夥伴中學及保障資料主任聯會逾400名會員支持。P

詳情：www.pcpd.org.hk/chinese/activities/arc_aw2013.html

Privacy Awareness Week (PAW) is an annual promotion event jointly held by members of Asia Pacific Privacy Authorities (APPA) around April and May. It aims at raising public awareness of the importance of protecting personal data privacy through a week's public education activities. This year, the event was celebrated in Australia, Canada, Macau, Mexico, New Zealand, South Korea and the United States. The theme of PAW 2013 in Hong Kong is



“Think Privacy! Be Smart Online”. It was supported by 44 partner secondary schools and over 400 members of the Data Protection Officers' Club. P

Details: www.pcpd.org.hk/english/activities/arc_aw2013.html



私隱專員蔣任宏與政制及內地事務局副局長劉江華在4月28日帶領一百五十名學生為「關注私隱運動2013」揭開序幕。

Mr Allan Chiang, Privacy Commissioner and Mr Lau Kong Wah, Under Secretary for Constitutional and Mainland Affairs led 150 students to kick off the Privacy Awareness Week 2013 on 28 April 2013.



公署鼓勵機構舉辦關注私隱的活動，在「關注私隱運動2013」期間更為保障資料主任聯會安排專題講座，邀請了香港互動市務商會會長方保儒先生分享對企業使用社交網站的意見。Businesses were encouraged to organise privacy awareness activities in workplaces during PAW. Mr Francis Fong, Chairman of the HK Association of Interactive Marketing was invited to share his views on the using of social networks for businesses with members of the Data Protection Officers' Club (DPOC) at the Welcoming Reception held on 2 May.



政制及內地事務局副局長劉江華與保障私隱學生大使專題研習比賽高級組三甲隊伍合照。
Mr Lau Kong Wah, Under Secretary for Constitutional and Mainland Affairs and the winners of the Learning Project Competition (senior section) of Student Ambassador for Privacy Protection Programme.



在「關注私隱運動2013」舉行的一星期，我們的學生大使也在校園向同學宣揚保障個人資料私隱的訊息。
The winning teams fulfilled their mission of “Student Ambassador for Privacy Protection” by promoting the protection of personal data privacy in their respective schools during PAW 2013.

零售業展開保障個人資料私隱活動

Retail Industry Campaign for Protecting Consumers' Personal Information

公署與香港零售管理協會合辦主題為「卓越零售·保障私隱」的特定行業保障私隱活動，開展儀式暨研討會於6月25日舉行，有超過50家零售商約150多人出席。公署與協會成立了工作小組，目標是增進零售業界對《個人資料(私隱)條例》的認識，提倡良好行事方式。一系列的培訓課程和講座將於10月起舉行，詳情：www.pcpd.org.hk/retail/

The PCPD launched an industry-specific privacy campaign themed “Driving Retail Excellence through Privacy Assurance” in partnership with the Hong Kong Retail



業界演講：「尊重個人資料贏取顧客信任」
— 中華電力有限公司法律總顧問鍾王穎婷女士
Response from the industry “Driving Retail Excellence: Protecting Personal Data” by Ms Elaine Chong, General Counsel, CLP

Management Association (“HKRMA”). The inaugural ceremony cum seminar was held on 25 June 2013. It was exceedingly well attended by about 150 practitioners from over 50 retailers.

A working group was set up with the HKRMA with an aim to promote understanding of

data protection requirements under the Ordinance and good privacy practice among members of the retail industry. More details of the training programmes (available from October) tailored to the need of the retail industry can be found at www.pcpd.org.hk/retail/



私隱專員蔣任宏先生與香港零售管理協會主席麥瑞琮女士(右)為「零售業保障私隱活動」揭開序幕。
Privacy Commissioner, Mr Allan Chiang and Chairman of the HKRMA (Right), Ms Caroline Mak declared launch of the Privacy Campaign for Retail Industry.

汲取國際經驗

Overseas Experience Sharing

私隱專員蔣任宏先生於2013年7月15至16日出席在新西蘭舉行的第39屆亞太區私隱機構論壇。他分別就私隱與科技工作小組報告及公共登記冊的資料保障主持兩個討論環節。

另外，他在9月23至26日出席在波蘭舉行的第35屆資料保障及私隱專員國際會議。來自不同地區的與會私隱專員通過了大會「手機應用程式生活化」宣言及多項有關網上行為追蹤、建立個人資料檔案、國際執法協調、數碼化教育等範疇的議案。私隱專員在剛推出的專員網誌分享了他在今次會議的所見所聞 www.pcpd.org.hk/chinese/about/blog_04102013.html。

Mr Allan Chiang, Privacy Commissioner attended the 39th Asia Pacific Privacy Authorities Forum 15-16 July 2013 in

New Zealand. He led two discussion sessions on Privacy and Technology Working Group report and protection of data in public registers.

Privacy Commissioner took part in the 35th International Conference of Data Protection and Privacy Commissioners which was held 23-26 September 2013 in Poland. At the conference the privacy commissioners from around the world adopted one declaration on “appification” of society and resolutions on web tracking, profiling, enforcement coordination, digital education and so on. Privacy Commissioner shares his insights gained from this conference in his inaugural message in his newly-launched blog www.pcpd.org.hk/english/about/blog_04102013.html.



個人資料(私隱)諮詢委員會新成員名單公布 New members of Personal Data (Privacy) Advisory Committee appointed

政府宣布委任三名新成員加入個人資料(私隱)諮詢委員會，以及續任五位現任委員。新一屆諮詢委員會的任期由2013年10月1日起生效，為期兩年。

私隱專員是委員會的主席。新一屆委員會的其他成員如下：

夏淑玲女士
孔慶全先生
郭振華先生*
孫淑貞女士
蕭世和先生
溫卓勳先生*
楊長華女士*

政制及內地事務局副秘書長或首席助理秘書長 P

* 新委任成員

The Government announced the appointment of three new members and re-appointment of five incumbent members to the Personal Data (Privacy) Advisory Committee for a term of two years with effect from 1 October 2013.

The Privacy Commissioner is the Chairman of the Advisory Committee. Other members are as follows:

Ms Shirley HA Suk-ling
Mr Billy HUNG Hing-chuen
Mr Jimmy KWOK Chun-wah *
Ms SHEN Shuk-ching
Mr SIU Sai-wo
Mr David WAN Chuck-fan*
Ms Winnie YEUNG Cheung-wah*
Deputy Secretary for Constitutional and Mainland Affairs or Principal Assistant Secretary for Constitutional and Mainland Affairs P

* new appointees

兩岸四地個人資料保護論壇 Speaking at Data Protection Forum in Macau



私隱專員今年6月21日以講者身份出席澳門的「兩岸四地個人資料保護論壇」，與大陸、澳門及台灣代表交流保障個人資料的經驗和觀點。論壇由澳門特區政府保護個人資料辦公室及澳門刑事法研究會合辦。P

Privacy Commissioner participated as a speaker at a Forum in Macau to share views and experience on personal data protection with delegates from the Mainland, Macau and Taiwan. The forum was co-organised by the Office for Personal Data Protection, Government of Macao SAR and the Associação de Estudo de Direito Criminal de Macao in Macau on 21 June 2013. P

公署長期服務獎2013 PCPD Long Service Recognition Award 2013



儘管公署的歷史相對尚淺，但已經有17位在职同事服務公署七年以上。公署每年嘉許長期服務的職員，以肯定和表揚他們對機構的盡責及忠誠的服務。今年十位同事獲頒長期服務獎。P

Although PCPD is a relatively young organisation, there are 17 existing staff who have served the PCPD over seven years. The PCPD honors long-service staff at an annual ceremony in recognition of their dedicated and loyal services. This year 10 of our staff members were presented the award. P



陳美儀女士接受獎狀時表示，多年來與公署一同成長，感到自豪。

Ms Amy Chan feels proud as she grows with the PCPD. She received the award from Privacy Commissioner for her long service with the PCPD.

服務年期 Years of Service: 15

陳美儀女士 Ms Amy Chan

服務年期 Years of Service: 10

胡美麗女士 Ms Vanessa Wu

服務年期 Years of Service: 7

黎智敏女士 Ms Joyce Lai

羅美琪女士 Ms Maggie Lo

陳培玲女士 Ms Carol Chan

郭正熙先生 Mr Brad Kwok

盧迪凡先生 Mr DF Lo

石家兒女士 Ms Kathy Shek

張蘭詩女士 Ms Nancy Cheung

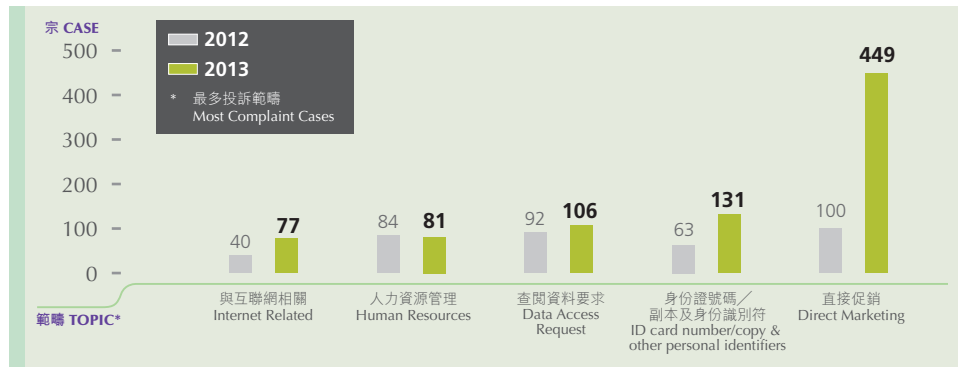
李雪婷女士 Ms Hilda Lee

接獲投訴個案

(2013年1月至9月)：
1,433 宗

Number of complaint cases received

(January – September 2013):
1,433 cases

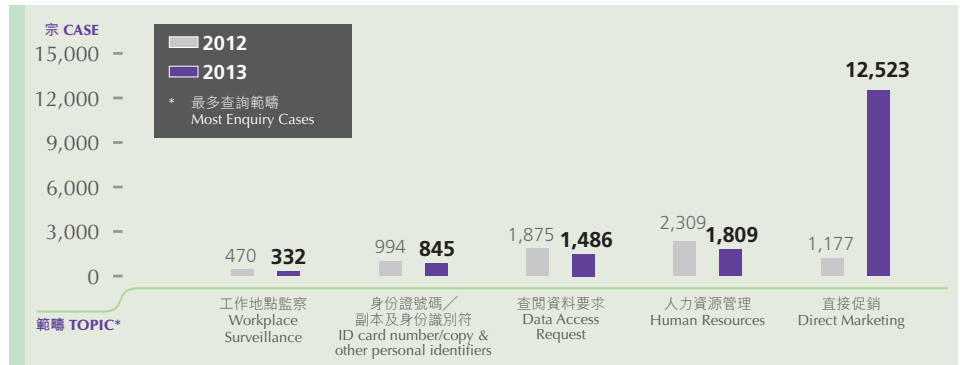


接獲查詢數目

(2013年1月至9月)：
20,267 宗

Number of enquiry cases

(January – September 2013):
20,267 cases



詞彙 Glossary

大數據 Big Data

「大數據」這個當時得令的詞語，一般用來形容大得不能以傳統方法輕易地儲存或分析的數據集。大數據通常有下述特徵：「大量」(Volume)、「高速」(Velocity)及「多元」(Variety) (合稱3Vs)。

「大量」是指機構收集及產生大量數據。「高速」指現時由感應器或機器產生及分析數據的速度。而「多元」則指被收集及可能使用的數據的繁多種類，包括文字、語音、視像、網絡日誌等。

企業無可避免要面對大數據的挑戰。以下是兩個有關大數據的例子：

全球電子數據量於2005年是130艾位元組(exabytes)¹，而在2010年已達到1,227艾位元組。預計2015年會上升至7,910艾位元組。

Facebook擁有超過十億個活躍用戶，每日有超過500太位元組(terabytes)的數據(包括文字、視像及相片)被上載。

資料的數碼化令資料的儲存、分享、搜尋、分析及複製變得非常快捷和便宜。隨著電腦運算能力的提升及數據被移到「雲端」，情況會更甚，這令大數據的威力和潛力大得難以想像。

大數據對資料私隱保障及規管亦帶來巨大挑戰。有人呼籲把世界各地的資料私

隱標準及原則融合，或甚至標準化，以助國際間管理大數據。

最近，有人建議在這個3Vs模式中再加上其他定義特性，包括「變異性」(variability) (指數據的意義會隨著情況而轉變)，及「價值」(value) (因為大數據經分析後可得出資訊及知識)。^P

"Big data" is a buzzword used to describe datasets so large that they cannot be easily stored or analysed by traditional methods. Typically big data has the following characteristics: high volume, high velocity and high variety (3 "Vs").

Volume refers to the massive amounts of data collected and generated by organisations. Velocity refers to the speed at which the data can now be generated and analysed by sensors or machines. Finally, variety means the vast array of different types of data that is collected and potentially used – from text to audio, video, web logs and more.

It is only inevitable that businesses are facing with the big data challenge. Here are two examples of how much data is out there:

The quantity of global digital data reached 130 exabytes¹ in 2005 then 1,227 exabytes in 2010. It is now predicted to rise to 7,910 exabytes in 2015.

Facebook had more than a billion active users and each day more than 500 terabytes of data (including text, video and photo) is being uploaded.

The fact that the data collected is digital makes storage, sharing, search, analysis and copying very fast and very cheap. It is even more so now that much of the computing power required, as well as the data, is being moved into 'the cloud'. This makes the power and potential of the big data almost unimaginably vast.

Big data poses great challenges for data privacy protection and regulation too. There have been calls for the harmonisation, or even standardisation, of data privacy standards and principles around the world to help manage big data.

More recently, additional Vs have been proposed for additional to the 3 Vs model, including variability (the meaning of data would vary according to context) and value (as information and then knowledge would be induced from big data upon analysis).^P



資料來源 Sources :

The Economist 2012 outlook

Privacy Aware, Vol 11 No. 3 Summer 2012-2013, the Office of the Victorian Privacy Commissioner
whatis.techtarget.com/definition/3Vs

¹ 一艾位元組等於百萬的三次方(1之後加18個零)個位元組(quintillion bytes)。

An Exabyte is one quintillion (1 followed by 18 zeros) bytes.

採用雲端運算處理公司資料前應考慮的私隱問題 Questions You Should Ask before Your Company Tries Cloud Computing



雲端運算對於商業機構具有吸引力，尤其是中小企資源有限，難以大力投資於伺服器硬體及內部資訊科技人員，以管理資訊系統。不過，你是否真正了解甚麼是雲端運算？以雲端處理個人資料有何風險？聘用雲端服務供應商前應考慮下列事宜。^{P1}

Cloud computing is attractive to businesses, especially to small-to-medium enterprises with limited resources to invest in server hardware and on-site technical personnel for IT management. However, are you really clear about what the cloud is and

what risks you take storing personal information on the cloud? Here is a checklist of what you should consider before engaging a cloud service provider (cloud provider).^{P1}

<p>1. 法律責任 Legal responsibility</p>	<p>如儲存於雲端的資料包括個人資料，你的公司(資料使用者)便有責任根據《個人資料(私隱)條例》的規定，保障個人資料的安全。根據條例，若資料使用者的承辦商(例如雲端服務供應商)外洩或濫用資料，須被視為由該資料使用者作出。</p> <p>根據法例，該資料使用者須採取合約規範方法或其他方法，以防止轉移予該雲端服務供應商的個人資料未獲准許或意外地被查閱、處理、刪除、喪失或使用。</p> <p>If data stored in the cloud includes personal data, then it is the responsibility of your company (the data user) to safeguard the personal data according to the requirements under the Personal Data (Privacy) Ordinance. Under the Ordinance, any data breach or misuse of personal data by a data user's contractor (such as a cloud provider) is treated as having been done by the data user.</p> <p>According to the Ordinance, the data user must adopt contractual or other means to prevent unauthorised or accidental access, processing, erasure, loss or use of the data transferred to the cloud provider.</p>
<p>2. 地方及資料轉移 Location and data flow</p>	<p>對於在多個管轄區擁有數據中心的雲端服務供應商，受託的個人資料可能會由一個管轄區流至另一管轄區。如你容許客戶/用戶的個人資料轉移至香港以外地方，應確保有關資料獲得的保障跟在香港相若。</p> <p>For cloud providers that have data centres distributed across multiple jurisdictions, personal data entrusted to them may flow from one jurisdiction to another. If you allow the personal data that your customers/users entrusted to you to be transferred to places outside of Hong Kong, you must ensure that such data is treated with a similar level of protection as if it resides in Hong Kong.</p>
<p>3. 寬鬆的外判安排 Loose outsourcing arrangements</p>	<p>部分雲端服務供應商會透過承包及分包提供服務。此等外判安排可能會以寬鬆的合約或合作方式來維持，以保持商業靈活性。</p> <p>你應留意此等安排，以確保有效地遵從資料保障規定。例如，雲端服務供應商的支援人員是否只在「有需要」的原則下才查閱有關資料？有甚麼措施確保保障資料原則獲得遵從？如承包商/分包商沒有保護有關資料，是否須按合約作出補救或受當地規管機構的制裁？</p> <p>Some cloud providers may deliver their service through contracting/or sub-contracting. Such engagements may be based on loosely formed contracts or partnerships, which give them flexibility.</p> <p>You need to be aware of such arrangements to ensure that your data protection requirements are effectively met. For example, is access restricted to those who need to know? What measures are in place to ensure compliance with data protection principles? If contractors/sub-contractors fail to protect the data, will they be subject to any contractual remedy obligation or sanctions from their local regulatory authorities?</p>
<p>4. 標準服務及合約 Standard services and contracts</p>	<p>有些雲端服務供應商以薄利多銷形式營運，因此只向客戶提供類型有限的服務，並採用標準服務合約。小心評估有關服務及合約是否符合所需的保安及資料私隱保障要求。如服務與需求存在差距，必須找方法彌補這差距。此外，你亦應設法有效地執行雲端服務供應商的合約。</p> <p>Some cloud providers operate their business in a “quick-turnover” and “thin-margin” manner so that they only offer a small number of service types with standard contracts to their customers.</p> <p>Carefully evaluate whether the services and the contracts meet your security and data privacy protection requirements. If there is a gap between what is being offered and what is required, find ways to address the gap. You will also need to find ways to enforce the contract with the cloud providers effectively.</p>
<p>5. 其他外判事宜 Other outsourcing issues</p>	<p>在「收集個人資料聲明」中通知資料當事人你有意把資料的處理外判予雲端服務供應商。</p> <p>確保在與雲端服務供應商簽訂的合約中，有條文限制個人資料只可用於原本或有關的目的；規定雲端服務供應商有責任通報資料外洩事件；規範雲端供應商在再沒有需要時刪除或歸還手上的個人資料。</p> <p>Inform your data subjects in the Personal Information Collection Statement (PICS) of your intention to outsource data processing to a cloud provider.</p> <p>Ensure there are provisions in the contract with cloud providers to limit the use of personal data to the original or directly related purpose; to require the cloud providers to notify you of data breaches, if any; and to erase or return personal data when it is no longer required by the cloud providers</p>



短片 Videos:

- 1 公署 YouTube 頻道：
提供保障智能電話及網上私隱的短片

PCPD YouTube Channel:

provide short videos on smartphone and online data protection
www.youtube.com/user/PCPDHKSAR

- 2 政府宣傳短片：
慎重保護個人資料防止濫用作直銷
www.cmab.gov.hk/video/DirectMarketing_Cant_4_3_130315.wmv

TV API on Direct Marketing

www.cmab.gov.hk/video/DirectMarketing_Eng_4_3_130315.wmv

網站 Websites:

- 3 網上私隱要自保網站：
就保障網上個人資料私隱提供一站式的貼士和資訊

Think PRIVACY! BE SMART Online website:

provides one-stop tips and resources on privacy protection online
www.pcpd.org.hk/besmartonline

- 4 青少年專題網站：
為年青人提供一站式有關保障個人資料私隱的資訊。老師亦可利用相關資源製作教材

Youth Privacy Portal:

provides one-stop resources for youth on privacy protection and for teachers to prepare related teaching materials.
www.pcpd.org.hk/youthprivacy

指引資料 Guidance Notes:

- 5 擬備收集個人資料聲明及私隱政策聲明指引

Guidance on Preparing Personal Information Collection Statement and Privacy Policy Statement

- 6 使用從公共領域取得的個人資料指引

Guidance on Use of Personal Data Obtained from the Public Domain

小冊子 Leaflet:

- 7 在網絡世界保障私隱 — 精明使用社交網

Protecting Online Privacy – Be Smart on Social Networks

圖鑑 Infographic:

- 8 接受直銷，由你作主！你有權隨時拒絕！：協助公眾人士了解《2012年個人資料(私隱)(修訂)條例》中加強規管直接促銷活動收集和使用個人資料的新條文如何應用

To Receive or Not to Receive Direct Marketing Messages, It's Your Call - You have the Right to Opt-Out at all times: It is aimed to illustrate how consumers may apply the new direct marketing provisions under the Personal Data (Privacy) (Amendment) Ordinance 2012 to real life situations

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2013/14零售服務業保障私隱活動培訓系列
Training Programmes under Privacy Campaign for Retail Industry 2013/14

講座 Seminar	
2013.10.03	直接促銷新規管機制簡介 Introductory Seminar on New Direct Marketing Regime
2013.12.17	《個人資料(私隱)條例》簡介 Introductory Seminar on Personal Data (Privacy) Ordinance
專業研習班 Professional Workshop	
2013.10.29	人力資源管理的資料保障 Data Protection in Human Resource Management
2013.11.22	直接促銷活動的資料保障 Data Protection in Direct Marketing Activities

www.pcpd.org.hk/retail

保障私隱學生大使計劃2014
Student Ambassador for Privacy Protection Programme 2014

- 2013.11.01** Deadline for Applications of Personal Data Privacy Protection News Reporting Competition
中學生關注私隱專題報道比賽截止報名
- 2013.11.10** News Reporting Training Workshop
專題報道工作坊

www.pcpd.org.hk/youthprivacy

大學保障私隱活動2013/14
University Privacy Campaign 2013/14

於下列院校舉辦巡迴講座、展覽及遊戲：

The campaign will be launched at the following tertiary institutions with a series of talks, exhibitions and games:

- 2013.10.02 – 03 香港樹仁大學
Hong Kong Shue Yan University
- 2013.10.04, 07 香港中文大學
The Chinese University of Hong Kong
- 2013.10.08 – 09 香港科技大學
The Hong Kong University of Science and Technology
- 2013.10.15 – 16 香港理工大學
The Hong Kong Polytechnic University
- 2013.10.23 – 24 香港教育學院
The Hong Kong Institute of Education
- 2013.10.29 – 30 香港浸會大學
Hong Kong Baptist University
- 2013.10.31 – 11.01 嶺南大學
Lingnan University
- 2013.11.05 – 06 香港城市大學
City University of Hong Kong
- 2013.11.13 – 14 香港公開大學
The Open University of Hong Kong
- 2013.11/12 香港大學
The University of Hong Kong

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- 保障個人資料專業研習班
Professional Workshops on Data Protection
- 《個人資料(私隱)條例》簡介講座(每兩星期舉行)
"Introduction to the Personal Data (Privacy) Ordinance" Seminars (held bi-weekly)
- 保護個人資料私隱－日常生活與善用科技講座系列
Protection of Personal Data Privacy – Talk Series on the Proper Use of Technology in Daily Life

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