

The University of Hong Kong
Information Security & Personal Data Protection Awareness Week 2021

Data Protection in the Digital Era

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3 November 2021



香港個人資料私隱專員公署
Office of the Privacy Commissioner
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Six Data Protection Principles under the Personal Data (Privacy) Ordinance

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Personal Data (Privacy) (Amendment) Ordinance 2021

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The Personal Information Protection Law of the Mainland
(內地《個人信息保護法》)

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Data Breach Is on the Rise: Major data breaches in recent years and individuals affected

2020	Estée Lauder	440 million
	Microsoft	250 million
	Instagram, TikTok, Youtube	235 million
2019	Capital One (Bank)	160 million
	Zynga (Online game developer)	218 million
	Facebook	419 million
2018	Marriott Hotel	383 million
	Twitter	330 million
	Facebook	140 million
	Uber	57 million
	Cathay Pacific Airways	9.4 million

Reference: Nord VPN, Forbes



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Major data breaches in 2021

Platforms	Affected individuals	Individuals in Hong Kong
Facebook	533 million	2.93 million
LinkedIn	500 million	280,000 (All Hong Kong users)
Clubhouse	1.3 million	Unknown
Air India	4.5 million	Unknown

Over
1 billion
users affected

1

Six Data Protection Principles under the Personal Data (Privacy) Ordinance

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Personal Data (Privacy) Ordinance (Cap. 486) PDPO

Applicable to both public (including government departments) and private sectors

Schedule 1 of the PDPO contains six **Data Protection Principles** which outline how data users should collect, handle and use personal data

Examples of personal data

- Name
- Telephone number
- Residential Address
- Email Address
- Identity Card number
- Date of Birth
- Medical Record



Six Data Protection Principles

DPP1 – Purpose and manner of collection of personal data

- Must be collected for a lawful purpose directly related to a **function** or **activity** of the data user
- The means of collection must be **lawful** and **fair**
- The data is **necessary**, **adequate** but **not excessive** in relation to the purpose of collection
- **All practicable steps shall be taken to notify** the data subjects whether it is obligatory to supply the personal data, **the purpose** of data collection, and **the classes of persons to whom the data may be transferred**, etc.



Six Data Protection Principles

DPP2 – Accuracy and duration of retention of personal data

- Data users should take all practicable steps to ensure:
 - the **accuracy** of the personal data
 - the personal data is **not kept longer than is necessary** for the fulfilment of the purpose for which the data is used
- If a **data processor** is engaged to process personal data, the data user must adopt contractual or other means to prevent the personal data from being kept longer than is necessary

Six Data Protection Principles

DPP3 – Use of personal data

- Personal data shall not, without the **prescribed consent** of the data subjects, be **used for a new purpose**

“New purpose” means any purpose which is unrelated to the original purpose or its directly related purpose when the data is collected

- Under certain circumstances, a relevant person in relation to a data subject may, on his or her behalf, give the prescribed consent required for using the data subject’s personal data for a new purpose



Six Data Protection Principles

DPP4 – Security of personal data

- Data users should take **all practicable steps** to ensure the personal data they hold is protected against **unauthorized or accidental access, processing, erasure, loss or use**
- **Adequate protection** must be given to the storage, processing and transfer of personal data
- If a **data processor** is engaged, the data user must adopt contractual or other means to prevent **unauthorized or accidental access, processing, erasure, loss or use** of the data transferred to the data processor for processing



Six Data Protection Principles

DPP5 – Information to be generally available

Transparency

Data users must provide information on: -

- 1) the **policies and practices** in relation to personal data;
- 2) the **kind** of personal data held; and
- 3) the **main purposes** for which personal data is used.



Six Data Protection Principles

DPP6 – Access to personal data

Data subject's rights

A data subject must be **given access to his personal data** and be entitled to request **corrections** where the data is inaccurate

A data user must comply with a data access/correction request within **40 days** after receipt of the request

(Sections 19 and 23 of the PDPO)



2

Personal Data (Privacy) (Amendment) Ordinance 2021

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Three main aspects of the Amendment Ordinance

1

Create offences to curb doxxing acts

2

Empower the Commissioner to carry out criminal investigation and institute prosecution



3

Confer on the Commissioner power to issue cessation notices

Commencement date of the Amendment Ordinance

The Amendment Ordinance was published in the gazette and came into effect on 8 October 2021.



(I) Section 64 – Create offences to curb Doxxing Acts

two-tier

New section 64(3A) of the Amendment Ordinance – first tier offence (without actual harm)

A person commits an offence if the person discloses any personal data of a data subject **without the relevant consent** of the data subject –

- (a) with an **intent** to cause **any specified harm** to the data subject or any family member of the data subject; or
- (b) being **reckless** as to whether **any specified harm** would be, or would likely be, caused to the data subject or any family member of the data subject.

(I) Section 64 – Create offences to curb Doxxing Acts

two-tier

New section 64(3A) of the Amendment Ordinance – first tier offence (without actual harm)

New section 64(3B) of the Amendment Ordinance – Penalty

(3B) A person who commits an offence under subsection (3A) is liable on conviction to a fine at level 6 (\$100,000) and to imprisonment for 2 years.

(I) Section 64 – Create offences to curb Doxxing Acts

two-tier

New section 64(3C) of the Amendment Ordinance – second tier offence (with actual harm)

A person commits an offence if –

- (a) the person discloses any personal data of a data subject **without the relevant consent** of the data subject –
 - (i) with an **intent** to cause **any specified harm** to the data subject or any family member of the data subject; or
 - (ii) being **reckless** as to whether **any specified harm** would be, or would likely be, caused to the data subject or any family member of the data subject; and
- (b) the disclosure causes any specified harm to the data subject or any family member of the data subject.

(I) Section 64 – Create offences to curb Doxxing Acts

two-tier

New section 64(3C) of the Amendment Ordinance – second tier offence (with actual harm)

New section 64(3D) of the Amendment Ordinance – Penalty

(3D) A person who commits an offence under subsection (3C) is liable on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 5 years



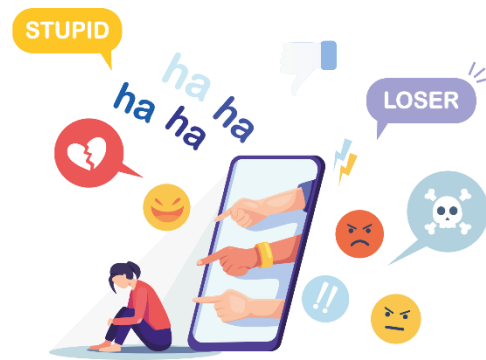
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(I) Section 64 – Create offences to curb Doxxing Acts

Specified harm, in relation to a person, means -

- (a) harassment, molestation, pestering, threat or intimidation to the person;
- (b) bodily harm or psychological harm to the person;
- (c) harm causing the person reasonably to be concerned for the person's safety or well-being
- (d) damage to the property of the person

(new section 64(6) of the Amendment Ordinance)



(II) Empower the Commissioner to carry out criminal investigation and institute prosecution

Issue **written notice** to request any person to provide relevant material; or to answer relevant question to facilitate investigation (new section 66D of the Amendment Ordinance)



The Commissioner may

Apply for **warrant** to (1) enter and search **premises** and seize materials for investigation; or **access electronic device** (and decrypt any material stored therein) (new section 66G of the Amendment Ordinance)

To **stop, search** and **arrest**, without warrant, any person who is reasonably suspected of having committed a doxxing-related offence (new section 66H of the Amendment Ordinance)

Prosecute **in the name of the Commissioner** a doxxing-related offence **triable summarily** in the Magistrates' Court (new section 64C of the Amendment Ordinance)

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(III) Confer on the Commissioner power to issue cessation notices

New sections 66K and 66M of the Amendment Ordinance – under what circumstances can the Commissioner serve a cessation notice

When the Commissioner has reasonable ground to believe there is a **“subject message”**, the Commissioner may serve a cessation notice on a person who is **able** to take a cessation action.

Hong Kong Person

- (a) an individual who is present in Hong Kong
- (b) a body of person that is incorporated, established or registered in Hong Kong; or
- (c) a body of persons that has a place of business in Hong Kong

A person (not being a Hong Kong Person) that **has provided or is providing any service** (whether or not in Hong Kong) **to any Hong Kong person**

Cessation notice has an **extra-territorial application**.

3

The Personal Information Protection Law of the Mainland (內地《個人信息保護法》)

Personal Information Protection Law (PIPL) of the Mainland (內地《個人信息保護法》)

Highlights

- **Effective date:** 1 November 2021
- Regulates personal information processing activities in the Mainland
- **Personal information** refers to
 - all kinds of information, recorded electronically or in other forms, that relates to identified or identifiable natural persons, excluding anonymised information

Individuals' consents as the principal legal basis for processing personal information

Stronger protection for sensitive and children's personal information

Principles of processing and data subjects' rights comparable to international standards

Extraterritorial application and rules on cross-border data transfer

Ban on use of automated decision-making leading to unreasonable price discrimination against individuals (殺熟)

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Personal Information Protection Law (PIPL) of the Mainland (內地《個人信息保護法》)

Extra-territorial Application

**Foreign
Organisations**

Carrying out personal information processing activities outside the Mainland for the purpose of:

Offering products or services to natural persons in the Mainland



OR

Analysing and assessing the behaviours of natural persons in the Mainland



Will be subject to the PIPL



They are required to establish designated agencies or appoint representatives in the Mainland

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Personal Information Protection Law (PIPL) of the Mainland (內地《個人信息保護法》)

Cross-border Data Transfer

Carry out personal information protection impact assessments



Obtaining separate consent (單獨同意) from individuals



Passing the security assessment conducted by the state cyberspace authorities

OR

Obtaining certification in relation to personal information protection

OR

Entering into a standard contract prescribed by the state cyberspace authorities

OR

Fulfilling the requirements stipulated in other laws or regulations



More stringent requirements for

Operators of critical information infrastructure

Processors that handle certain amount of personal information

- They shall store the personal information collected and generated in the Mainland **locally**
- If it is necessary to transfer the personal information overseas, they shall pass the security assessment conducted by the state cyberspace authorities

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Contact Us

The screenshot shows the PCPD website homepage. At the top, there is a header with the PCPD logo, the name in Chinese and English, and the tagline 'Protect, Respect Personal Data Privacy'. Below the header is a navigation menu with links for 'About PCPD', 'Data Privacy Law', 'News & Events', 'Enforcement Reports', 'Frequently Asked Questions', 'Compliance & Enforcement', 'Doxxing Offences NEW!', 'Complaints', 'Education & Training', 'Resources Centre', and 'Contact Us'. A search bar is located on the right. Below the navigation is a 'Follow' section with social media icons for Facebook, Instagram, LinkedIn, Twitter, and YouTube. The main content area features a 'What's New' section with a 'More' link. The news items include: 'Event Organised in Celebration of PCPD's 25th Anniversary – Webinar on "The Personal Information Protection Law of the Mainland"', 'PCPD Publishes Investigation Report on Security Measures Taken by 14 Restaurants to Protect Customers' Registration Data', 'The PCPD, together with Five Data Protection Authorities, Issues A Joint Statement on Global Privacy Expectations of Video Teleconferencing Companies', 'Reaching out to Property Management Sector – "Law and Regulation Series" Seminar of the Property Management Services Authority', 'Privacy Commissioner Appealed for Greater International Collaboration at the 43rd Global Privacy Assembly', 'Ransomware Attack on Digital Marketing Agency's Computer System Privacy Commissioner Commenced Investigation', 'PCPD 2020-21 Annual Report', 'Reaching out to Enterprises – Hong Kong Productivity Council', 'The Personal Data (Privacy) (Amendment) Ordinance 2021 Takes Effect Today to Criminalise Doxxing Acts', and 'Privacy Commissioner Delivered a Speech as the Guest of Honour at the Hong Kong Chartered Governance Institute Annual Convocation 2021'. At the bottom, there are two tabs: 'For Individuals' and 'For Organisations'.

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