

*PCPD's Submission in Response to Public Consultation
on Improvement Proposals on Non-means-tested Loan Schemes*

The Privacy Commissioner for Personal Data (PCPD) refers to the captioned consultation on the loan schemes administered by the Student Financial Assistance Agency (SFAA). PCPD would like to comment specifically on the two improvement proposals put forward by the Administration to tackle the student loan default problem more effectively:

- (a) Proposal A: the sharing of negative credit data of student defaulters with a credit reference agency (CRA); and
- (b) Proposal B: requiring mature loan borrowers who apply for student loans for the first time above a certain amount to provide a credit report issued by a credit reference agency.

2. At present, there is only one major consumer CRA in Hong Kong, namely, TransUnion Limited (TransUnion), which operates in a closed system almost exclusive to the banks and licensed money lenders in Hong Kong. These credit providers share their customers' credit data among themselves through TransUnion to facilitate themselves in assessing and monitoring the customers' credit risk, credit-worthiness and credit capacity.

Compliance with the Personal Data (Privacy) Ordinance (PD(P)O)

Proposal A

3. The framework of operation, extent of application and the amount of information to be shared under Proposal A are not defined. If Proposal A were applied to **existing borrowers**, the question will arise whether the proposal would be in accord with the original purpose of collection of the borrowers' personal data. If not, the disclosure of data by SFAA to CRA without the prescribed consent of the borrowers would constitute a breach of Data Protection Principle¹ (DPP) 3.

¹ Schedule 1 of the PD(P)O sets out 6 Data Protection Principles

4. Under DPP3, personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than the original purpose of collection or its directly related purpose. Assuming that SFAA had not stated at the time of collecting the borrowers' personal data that the borrowers' negative credit data would be disclosed to the CRA in the event of default, the reasonable expectation of the borrower as regards the use of his personal data would have to be ascertained. To start with, the original purpose of collecting personal data of student loans borrowers by SFAA should be processing loan applications, awarding loans, and recovery of outstanding loans etc. By disclosing negative credit data to the CRA, SFAA would facilitate the banks and licensed money lenders in their credit assessment and monitoring of the students. This is not the original purpose of data collection. Further, it is obviously not within the reasonable expectation of the borrowers that their negative credit data would be disclosed to CRA. Hence, such disclosure is not a purpose directly related to the original one. In the circumstances, should SFAA disclose the negative credit data to CRA without the prescribed consent of the borrowers, SFAA would be in breach of DPP3.

5. The term "prescribed consent" is defined under s.2(3) of the PD(P)O as "the express consent of the person given voluntarily". If, for the sake of argument, SFAA requires the borrowers to sign a consent form consenting to such disclosure to the CRA, failing which SFAA shall demand loans from the borrowers immediately, such consent may not be regarded as a "prescribed consent" under DPP3. This is because borrowers would have probably given their consent for fear of SFAA recalling their loans, hence not voluntary.

6. If the Administration only intends the Proposal to cover **new applicants**, the SFAA will need to take all practicable steps to inform the applicant of the arrangement for the transfer of his negative credit data to the CRA in the event of default. If that is done, arguably, any such use of the data would not be a contravention of DPP3. However, the question whether the borrower's personal data are collected by means which are fair in the circumstances of the case (DPP1(2)) may be relevant. As expressed vehemently by the students representatives at the meeting of the Joint Committee of Student Finance on 31 January 2012, Non-means-tested Loan is the only secured source from which students irrespective of family backgrounds can obtain funds to finance their education. They pointed out that under many circumstances; students have no other alternatives but to apply

for Non-means-tested Loans.

Proposal B

7. Under DPP1, personal data shall not be collected, inter alia, unless the data are adequate but not excessive in relation to the purpose of collection. If credit-worthiness is not a factor to be considered by the Administration in the award of loans, collection of credit reports from the borrowers under Proposal B may amount to excessive data collection and therefore contravene DPP1.

8. From the information provided by the Administration, including the current consultation paper, it is not clear whether the credit-worthiness of the mature first-time borrowers is one of the considerations for granting the Non-means-tested Loan or not. If affirmative, it begs the question whether the loan is truly non-means-tested.

Privacy Concerns

9. PCPD has previously pointed out in his submission to the Legislative Council Panel on Education on 14 November 2011 [LC Paper No. CB(2)298/11-12(01)] at <http://www.legco.gov.hk/yr11-12/english/panels/ed/papers/ed1114cb2-298-1-e.pdf> (the “Submission”) a number of privacy concerns about the Proposal.

(a) First, it is likely that Proposal A will open the floodgate of a closed system to requests of a similar nature from (i) other government departments for recovery of overdue taxes, government rents and rates, water charges, etc. and (ii) private sector sources such as retail, small business, telecoms, utilities and others which are also keen to recover outstanding debts from their customers.

(b) Secondly, the proposal entails the transfer of the borrowers’ very private and sensitive data from a Government agency to TransUnion: commercial enterprise which is not subject to the direct oversight of the Hong Kong Monetary Authority as the financial regulator. TransUnion’s majority shareholder is not Hong Kong based.

- (c) Thirdly, it is important to note that TransUnion assigns a credit score to individual consumers based on the credit information held in its database but the computation of the score is proprietary and confidential information not to be disclosed to the consumers. In other words, whether Proposal A would produce an insignificant or a disproportionately negative effect on the borrower cannot be assessed. In case of the former, the purpose of Proposal A to deter defaults would be defeated. In case of the latter, the credit standing of the borrower would be unfairly jeopardised.

Public Support for Proposal A

10. It is noted from the Administration's public consultation documents and its media releases that there was clear public support to pursue Proposal A as an effective deterrent measure against default. Given the unique nature of the CRA and its closed system of operation, it is doubtful whether the support was given with full knowledge of the privacy implications pointed out above. It also seems clear that despite PCPD's appeal in the Submission, the privacy implications of Proposal A were not included in the relevant documents of the Administration's current public consultation so as to facilitate the public to express informed views.

11. It is also noted that the Administration has put forward Proposal A and Proposal B in the consultation exercise as if they are the only option for tackling defaults in the Non-means-tested Loan Scheme. Less privacy intrusive alternatives, such as stepping up efforts to recover debts and levying a surcharge on late payments were not offered or mentioned.

Public Opinion Survey

12. Against this background, PCPD commissioned a study in early February 2012 to ascertain the attitude of the general public and relevant stakeholders² towards Proposal A. A copy of the survey report is attached as

² Stakeholders are students and adults (i) pursuing or who have pursued tertiary and continuing education respectively; and (ii) who have outstanding loans administered by the Student Finance

Annex A. The survey findings, which seriously challenged the Administration's claim of public support to the proposal, are as follows:

- a. Without the knowledge of how CRA operates and the privacy implications of Proposal A, most of the interviewees (60%) indicated that they would support the proposal.
- b. When they were informed of the privacy concerns, the percentage of those who agreed with the proposal dropped to only 35%.
- c. The swing of views is sharper for the public (from 77% to 40%) than for students (from 53% to 33%)
- d. As the same set of figures show, the percentage of students supporting the Proposal is consistently lower than the percentage of members of the public supporting the Proposal.
- e. The respondents rated "using debt collection agency" and "heavier penalties against defaulters" as equally or slightly more effective than Proposal A. Both the students and the public rated "expediting legal process to recover default loans" as definitely more effective than Proposal A.

Conclusion

13. PCPD fully supports the Administration's determination to step up efforts to tackle the student loan problem. However, its proposal to share with TransUnion the negative data of defaulters in some 600 cases³ has serious privacy implications for the whole community and its deterrent effect is unknown due to the non-transparency of the operations of this CRA. There are also clear indications that the students and the general public, with full knowledge of these privacy implications, are largely against the proposal. PCPD therefore recommends that the Administration should look for other less privacy-intrusive measures which could be equally if not more effective than the current proposal.

14. As regards the Administration's proposal to require the more mature

Assistance Agency.

³ It is understood that the Administration intends to restrict the application of Proposal A to the relatively more serious default cases, say, those which owe more than \$100,000 and have ceased repayment for more than a year without any reasonable justification. There are about 600 cases meeting these criteria as at end of July 2011.

first-time loan borrowers to produce credit reports, PCPD considers that this in effect creates a pre-requisite requirement to assess the credit standing of the loan applicant and therefore begs the question as to whether the loan scheme is truly non-means tested. PCPD warns that if the ability to repay a loan is not a significant criterion for the loan award, collection of the credit report from the applicant may be considered excessive data collection, thus contravening DPP 1 under PD(P)O.

Office of the Privacy Commissioner for Personal Data
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