

# Enforcing Data Protection

## 執法保障資料

### 調查不偏不倚

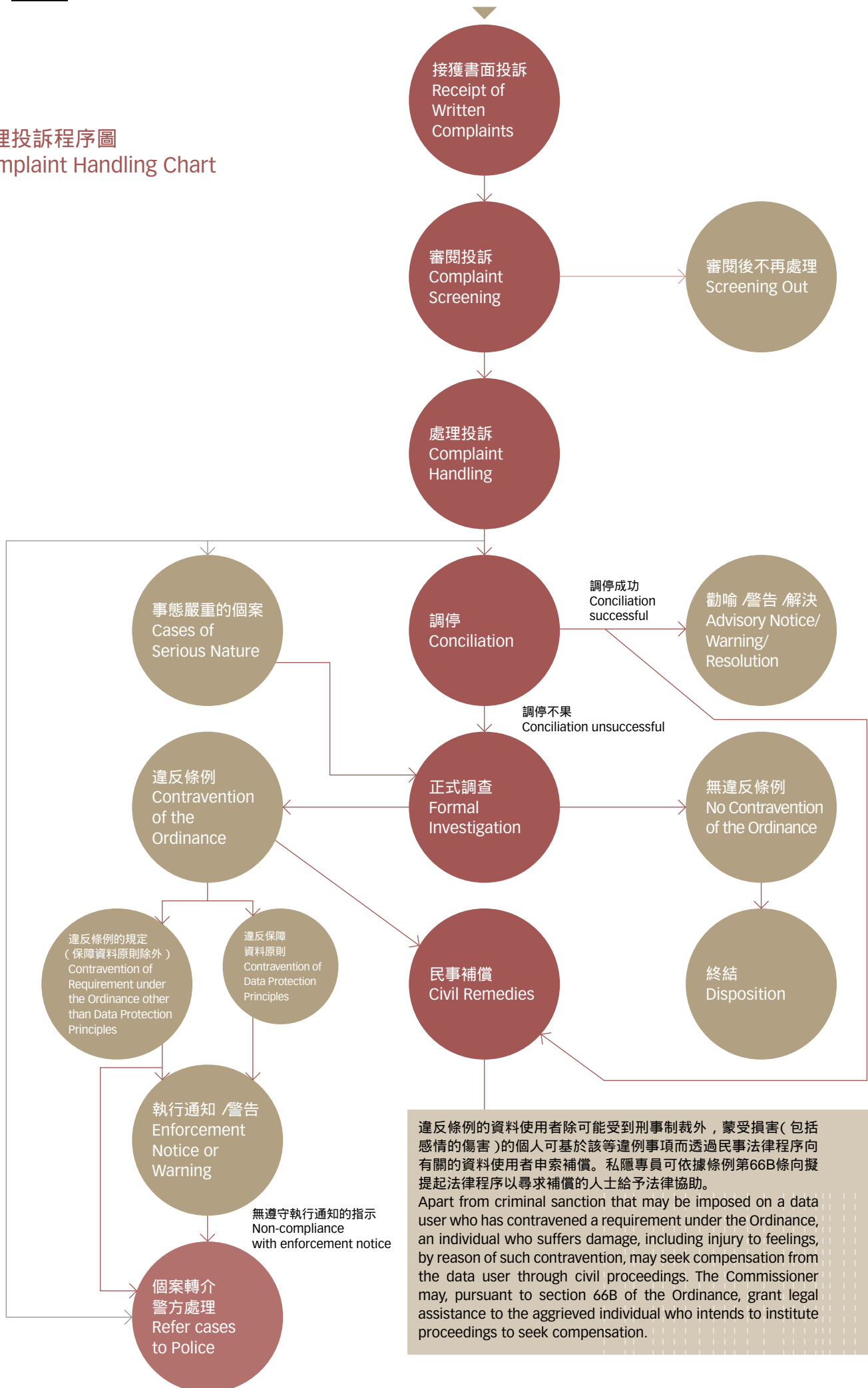
執行部分為投訴審閱組和調查組，對於市民的投訴，我們會作出具效率、公平公正的調查及處理。若發現有顯著私隱風險的情況存在，我們更會主動作出調查。

### **Thorough and Impartial Investigations**

The Operations Division, comprising the Complaint Screening Team and the Investigation Team, investigates and resolves complaints efficiently and in a manner that is fair to all parties concerned, and proactively investigate areas where privacy risks are significant.



處理投訴程序圖  
Complaint Handling Chart



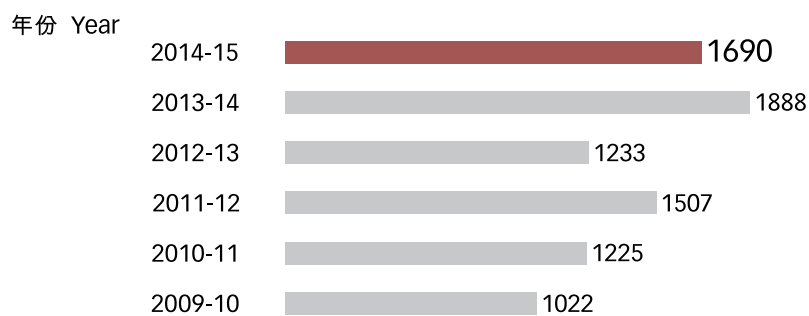
違反條例的資料使用者除可能受到刑事制裁外，蒙受損害(包括感情的傷害)的個人可基於該等違例事項而透過民事法律程序向有關的資料使用者申索補償。私隱專員可依據條例第66B條向擬提起法律程序以尋求補償的人士給予法律協助。  
Apart from criminal sanction that may be imposed on a data user who has contravened a requirement under the Ordinance, an individual who suffers damage, including injury to feelings, by reason of such contravention, may seek compensation from the data user through civil proceedings. The Commissioner may, pursuant to section 66B of the Ordinance, grant legal assistance to the aggrieved individual who intends to institute proceedings to seek compensation.

## 調查投訴

### 接獲有關個人資料私隱的投訴

公署在2014至15年度共接獲1,690宗投訴個案，較上年度下降了10%。有關使用資訊及通訊科技的投訴有上升的趨勢。由於公私營機構對直接促銷的新規管條文已較以前熟悉，直接促銷有關的投訴數字已見下跌。(圖3.1)

圖3.1：投訴個案數字



## COMPLAINT INVESTIGATION

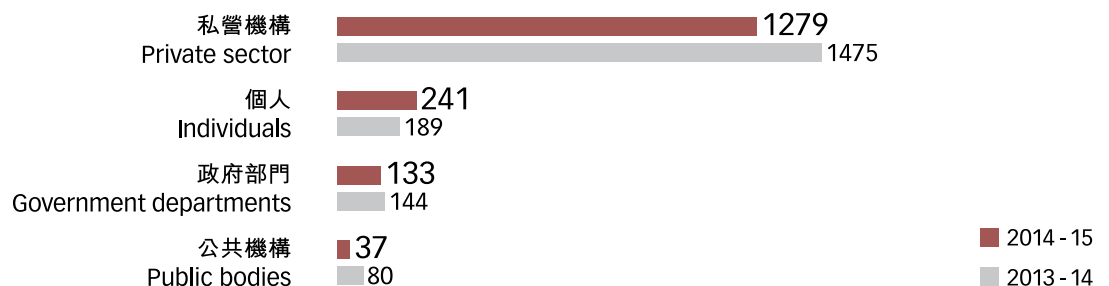
### Data Privacy Complaints Received

A total of 1,690 complaint cases were received in 2014-15, a 10% decrease from that of the previous year. Although there was a rising trend in the number of complaints in relation to the use of information and communication technology ("ICT"), the number of direct marketing-related complaints dropped as the public and organisations became more familiar with the requirements under the new direct marketing regime. (Figure 3.1)

Figure 3.1: Number of complaint cases received

本年度大多數個案都是投訴私營機構，共有1,279宗，佔76%；另有241宗投訴個人，佔14%；及170宗投訴公營機構(即政府部門及公共機構)，佔10%。(圖3.2)

圖3.2：被投訴者類別



During the year, the majority (76%) of the complaints were against private-sector organisations (1,279 cases); 14% were against individuals (241 cases); and 10% were against public-sector organisations (170 cases), including government departments and other public bodies (Figure 3.2).

Figure 3.2: Types of parties complained against

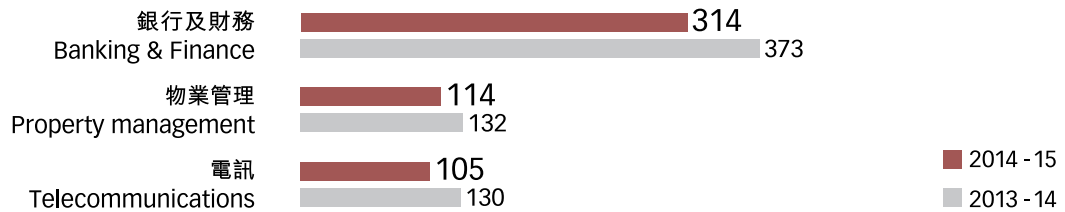
投訴個案數目 Number of complaint cases

在私營機構方面，銀行及財務機構接獲最多投訴；其次是物業管理及電訊。而針對電訊及財務機構的投訴個案，大部分都是涉及收集個人資料和違反條例有關直接促銷的新條文。（圖3.3）

The private-sector organisations that generated the most complaints were in the banking and financial sector, followed by the property management and telecommunications sectors. The majority of the complaints against companies in the telecommunications and financial sectors were related to the collection of personal data and breaches of the new direct marketing provisions of the Ordinance. (Figure 3.3)

圖3.3：對私營機構的投訴

Figure 3.3: Complaints against private-sector organisations



投訴個案數目 Number of complaint cases

投訴公營機構的個案中，大部分涉及：

The majority of complaints against public-sector organisations involved allegations of:

- 不符收集目的，及未取得當事人同意而使用或披露個人資料( 32% )；
- 過度或不公平收集個人資料( 23% )；
- 未能遵守查閱資料要求或改正資料要求( 22% )；或
- 欠缺保障個人資料的保安措施( 17% )。

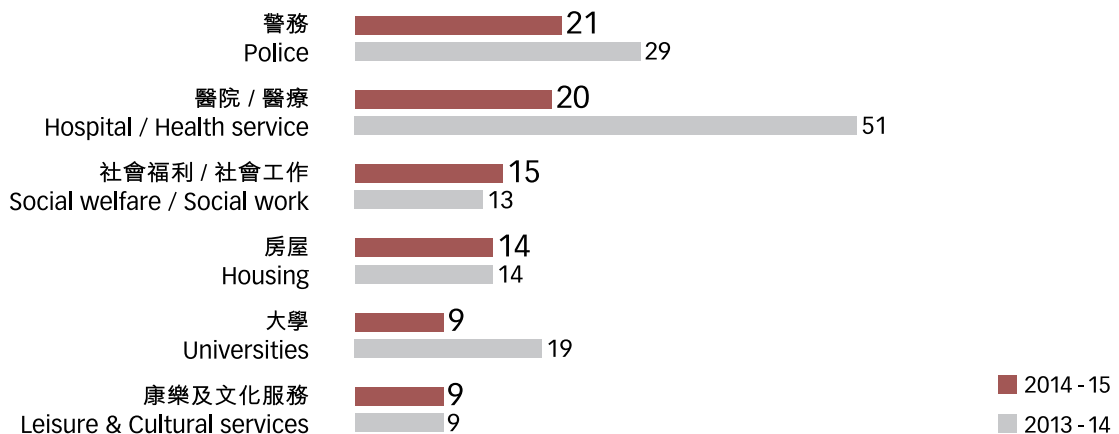
- the use or disclosure of personal data beyond the scope of the collection purpose and without the consent of the individual (32%);
- the excessive or unfair collection of personal data (23%);
- non-compliance with data access or correction requests (22%); or
- lack of security measures to protect personal data (17%).

涉及警務、醫院 / 醫療服務，以及社會福利 / 社會工作的投訴最多。（圖3.4）

The police force, hospital/health service organisations and social welfare/social work organisations generated the most complaints. (Figure 3.4)

圖3.4：對公營機構的投訴

Figure 3.4: Complaints against public-sector organisations



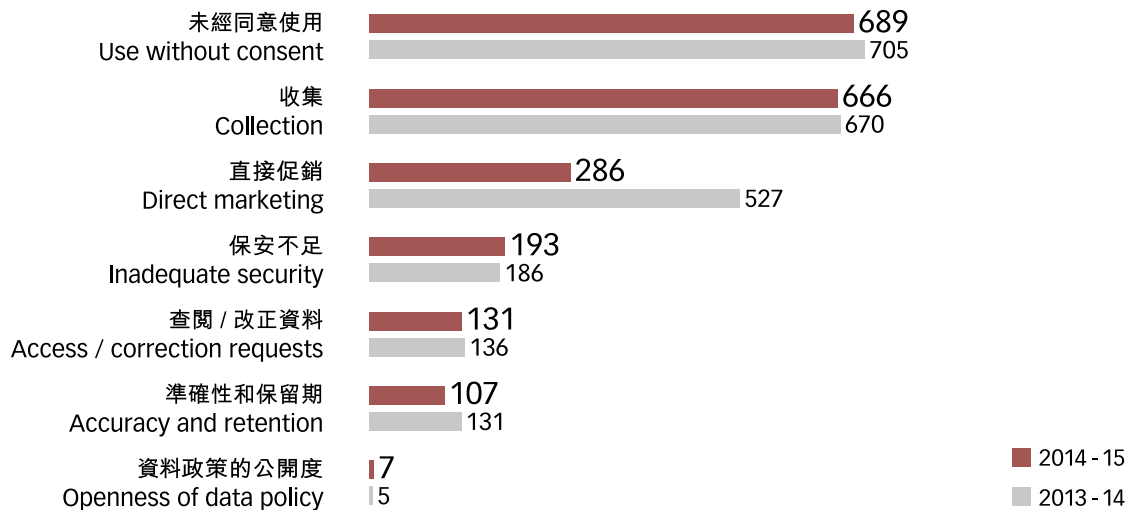
投訴個案數目 Number of complaint cases

公署於2014至15年度接獲的1,690宗投訴個案，涉及2,082項違反條例規定的指稱。當中，1,662項(80%)指稱違反保障資料原則(本身不構成刑事罪行)，其餘420項(20%)則指稱違反條例的條文。

投訴最多是指稱個人資料在未經同意的情況下被使用，佔689項；其次是有關收集資料的目的及方式，有666項；直接促銷佔286項；資料保安有193項；依從查閱或改正資料要求有131項，以及107項有關資料準確性及保留期。(圖3.5)

值得注意的是，有關直接促銷的私隱投訴由2013至14年度的歷史高位527宗，下降至2014至15年度的286宗。在這286宗投訴中，150宗(52%)關於資料使用者沒有依從拒絕直銷服務要求；91宗(32%)關於資料使用者未經資料當事人同意而將其個人資料用於直接促銷；及32宗(11%)關於資料使用者在使用資料當事人的個人資料作直接促銷前，沒有採取指明行動。

圖3.5：投訴的性質



The 1,690 complaints received in 2014-15 involved a total of 2,082 alleged breaches of the requirements under the Ordinance. Of these, 1,662 (80%) were alleged breaches of the data protection principles (not a criminal offence) and 420 (20%) were alleged contraventions of the provisions of the Ordinance.

The complaints involved mostly the use of personal data without the consent of the individual concerned (689 alleged breaches), followed by complaints about the purpose and manner of data collection (666 alleged breaches), direct marketing (286 alleged breaches), data security (193 alleged breaches), compliance with data access or correction requests (131 alleged breaches), and accuracy and period of retention (107 alleged breaches) (Figure 3.5).

It is worth noting that the number of direct marketing-related privacy complaints received dropped by 46%, from a record high 527 cases in 2013-14 to 286 cases in 2014-15. Of those 286 complaints, 150 (52%) concerned data users' failure to comply with opt-out requests; 91 (32%) involved data users' use of data subjects' personal data for direct marketing without the data subjects' consent; and 32 (11%) related to data users' failure to take specified action before using their data subjects' personal data for direct marketing.

Figure 3.5: Nature of complaints

涉嫌違例事項數目 Number of alleged breaches

涉及提供私人貸款的促銷電話數量很多。有些電話聲稱是由某銀行來電，但經調查後，該銀行否認曾授權職員致電，反而發現有其他貸款機構及中介公司牽涉其中。這些個案中，很多電話其實是在香港境外打出的，卻使用由本地電訊服務供應商所編配的八位數字香港電話號碼。要追查這些境外的來電，識別究竟是哪一家香港公司需為這些來電負責，是非常困難的。而來電者經常更改電話號碼，令追查更難上加難。公署已經與律政司及警方展開工作，設法解決這些困難。

圖3.6顯示投訴涉及的範疇。2014至15年度有關資訊及通訊科技的投訴達223宗，為歷年最多，較上年度上升89%。在這些個案中，98宗關於社交網絡的使用；79宗關於智能電話應用程式的使用；66宗關於在互聯網上披露或洩漏個人資料；34宗關於網絡欺凌，其餘11宗屬其他事項。數字大幅上升的主要原因是智能電話和互聯網的使用日益普遍。

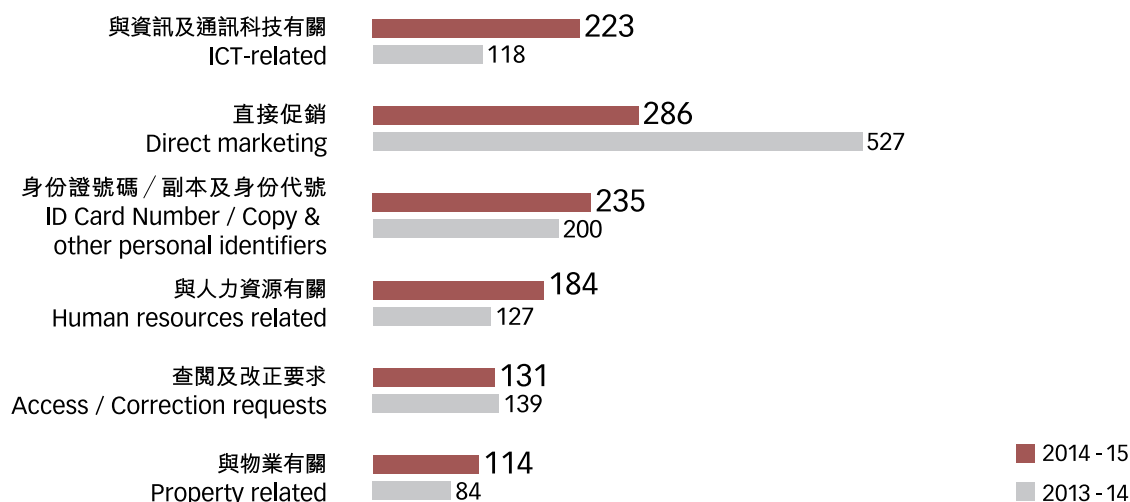
「佔領運動」的發生亦是導致網絡欺凌投訴上升的原因之一。公署在該段期間接獲不少來自兩派陣營人士、警務人員及其家屬關於這類投訴的個案。

There has been a preponderance of telemarketing calls involving offers of personal loans. The calls in question were purportedly made by a bank, but upon investigation, the bank denied having authorised its staff to make the calls. Instead, other lending institutions and intermediaries were involved. The calls were often made outside Hong Kong but using the 8-digit numbers assigned by local telecommunications service providers. There were difficulties in tracing the Hong Kong companies responsible for the marketing calls, compounded by the callers' practice to change their numbers regularly. The PCPD has been working with the Department of Justice and the Police to address these difficulties.

Figure 3.6 shows the breakdown of complaints by topic. **The record high 223 ICT-related complaints in 2014-15 represented an 89% year-on-year increase. Of these, 98 related specifically to use of social networks, 79 were about use of smartphone applications, 66 concerned disclosure or leakage of personal data on the Internet, 34 involved cyber-bullying and 11 related to other sub-topics. The rising trend is principally attributable to the increasing popularity of smartphones and the Internet.**

The "Occupy Movement" also contributed to the upward trend of cyber-bullying, with reported cases involving participants in the two opposing camps, as well as police officers and their family members.

圖3.6：投訴涉及的範疇



投訴個案數目 Number of complaint cases

在本年度，公署處理了329宗由上年度帶下來的投訴，加上新接獲的投訴，年內共需處理2,019宗投訴。在這些個案中，1,766宗(87%)在本年報期內已經完結，而餘下的253宗(13%)截至2015年3月31日，仍在處理中。

In addition to the new complaints received, the PCPD handled 329 complaints carried forward from the previous year, bringing the total number of complaints handled during the year to 2,019. Of these, 1,766 (87%) were completed during the reporting year, and 253 (13%) were in still progress on 31 March 2015.

### 年度投訴摘要

#### Summary of complaints handled in the year

	2014-15	2013-14	2012-13	2011-12
上年轉來的投訴 Complaints carried forward	329	393	381	376
接獲的投訴 Complaints received	1,690	1,888	1,233	1,507
經處理的投訴 Total complaints processed	2,019	2,281	1,614	1,883
已完結的投訴 Complaints completed	1,766	1,952	1,221	1,502
未完結的投訴 Complaints outstanding	253	329	393	381

#### 讚賞 Compliment

我想借此機會，讚賞公署的黃駿霆先生表現出色，積極地跟進我的個案，並且採取迅速的行動。

I would like to take this opportunity to commend Mr Austin Wong of the PCPD for his outstanding performance. He monitored my case closely and took quick action.

陳太  
投訴人  
Mrs CHAN  
Complainant

#### 感言 Response

儘管個案往往涉及繁瑣的文件，我深信適時的跟進和將心比心的處理是投訴人可以體會的。每個嘉許都使我工作起來更有幹勁和熱誠，這也是同事們團結協作的成果，更是投訴人對公署保障個人資料私隱這專業的肯定和信任的象徵，因此每個表揚我都會珍而重之。

Although complaint cases involve complicated documents, I strongly believe that the complainants will appreciate timely follow-up actions and our handling of the cases with empathy. Every compliment is the drive and enthusiasm to my work. It is the result of collaboration of our colleagues, as well as the recognition and trust of the complainant to the work of the PCPD on protection of personal data privacy. Therefore, I treasure every compliment.

黃駿霆  
助理個人資料主任  
Austin WONG  
Assistant Personal Data Officer





### 投訴結果

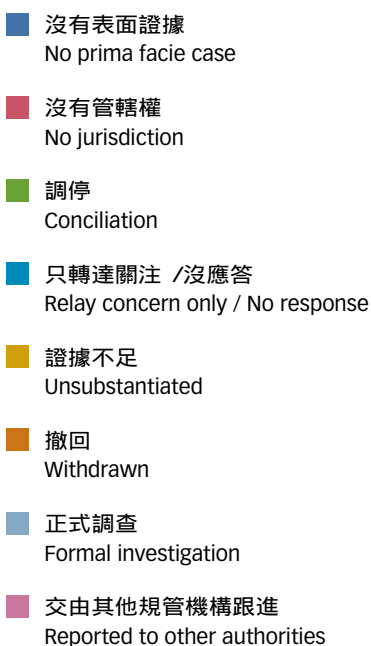
在本年報期內結案的1,766宗個案中，235宗(14%)在初步查訊期間經公署調停而得到解決，被投訴者對投訴人提出的問題作出適當的糾正，私隱專員並向其中194間機構提出勸喻及/或建議。另外，42宗個案(2%)在正式調查後獲得解決(當中有22宗(52%)經公署調停後得到解決(見下文「正式調查結果」))；及18宗(1%)交由其他規管機構例如警方跟進。(圖3.7)

圖3.11顯示被投訴者經公署調停後所採取的糾正行動分類。

不能展開調查的投訴個案：

- 64宗(37%)個案大多經由公署把投訴人的關注轉達至被投訴一方後得到解決，或私隱專員要求投訴人提供證據支持其指稱，但投訴人未有回應；
- 26宗(15%)沒有表面證據證明違規；
- 23宗(13%)不在條例的管轄範圍；
- 16宗(9%)在公署向被投訴者查詢後發現證據不足；
- 16宗(9%)在初步查詢期間投訴人撤回投訴。

圖3.7：投訴結果



### Outcome of complaint handling

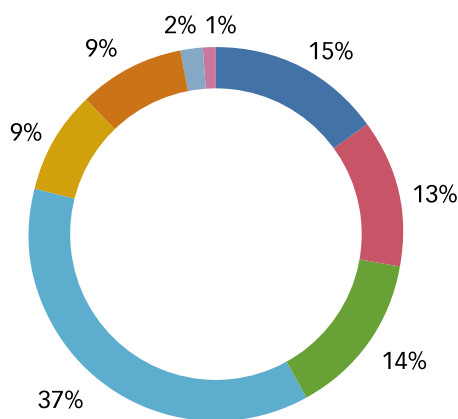
Of the 1,766 cases completed during the reporting period, 235 (14%) were resolved through conciliation during preliminary enquiries, i.e. the problems raised by the complainants were remedied by the parties complained against. The Commissioner gave advice and/or recommendations to 194 organisations involved in these cases; 42 (2%) were resolved after formal investigation, and of these, 22 cases (52%) were resolved through conciliation, (see “Results of formal investigations” below). Eighteen cases (1%) were transferred or reported to the other authorities e.g. Hong Kong Police (Figure 3.7).

Figure 3.11 shows the breakdown and categorisation of remedial action taken by the parties complained against in conciliation.

Among the other cases which were not investigated:

- 646 cases (37%) involved mostly complaints where the matter at issue had been dealt with by relaying the complainants’ concern to the parties complained against, or the complainants did not respond to the Commissioner’s inquiries after being invited to provide evidence to support their allegations;
- 269 cases (15%) were found to have no *prima facie* case of contravention;
- 230 cases (13%) were outside the jurisdiction of the Ordinance;
- 164 cases (9%) were found to be unsubstantiated after enquiries with the parties complained against; and
- 162 cases (9%) were withdrawn by the complainants during the preliminary enquiries.

Figure 3.7: Outcome of complaint handling



## 投訴個案的調查結果

### 正式調查結果

公署在本年報期內完成42宗正式調查，當中有七宗(17%)有違反條例規定的情況(包括違反法定條文及保障資料原則)。

而餘下的個案中，22宗(52%)在調查期間因雙方經調停後解決糾紛，12宗(29%)因不同原因而終止調查，一宗(2%)則沒有違反條例規定的情況。故此，在這些餘下個案中，私隱專員無需再就是否有任何違反情況作出結論。(圖3.8)

圖3.8：正式調查結果

- 違反保障資料原則及主體條文的規定  
Contravention (Data Protection Principle & Legal Provisions)
- 無違例  
No Contravention
- 終止調查(雙方經調停後解決糾紛)  
Discontinued (resolved through conciliation)
- 終止調查(基於不同原因)  
Discontinued (for other reasons)

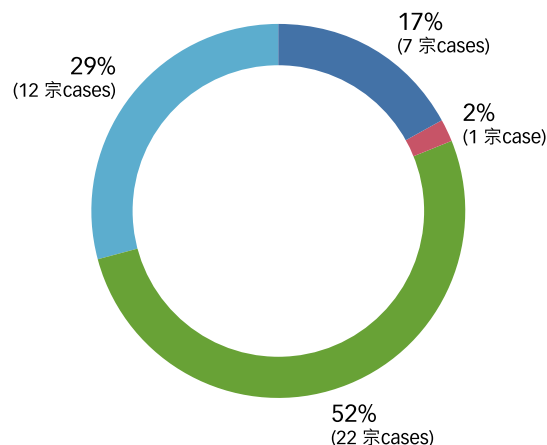
## RESULTS OF INVESTIGATIONS OF COMPLAINT CASES

### Results of Formal Investigations

During the reporting period, the PCPD completed 42 formal investigations and found seven cases (17%) involved contravention of the requirements under the Ordinance (both the statutory provisions and the Data Protection Principles).

Of the remaining cases, 22 (52%) were resolved through conciliation during the investigation, while 12 (29%) were discontinued for various reasons, and for one case (2%) there was no contravention. So amongst these remaining cases, it was unnecessary for the Commissioner to draw any conclusions as to whether or not there were any contraventions. (Figure 3.8)

Figure 3.8: Results of formal investigations



### 新入職員工 Newcomer

投訴的個案針對不同行業，在處理這些個案的過程中，我發現市民普遍對保護自身個人資料的意識較以前高。每當透過調停方式成功處理個案，令到資料使用者明白並承諾遵從條例的規定後，我感到很欣慰，這亦推動我繼續肩負寓執法於教育的使命。

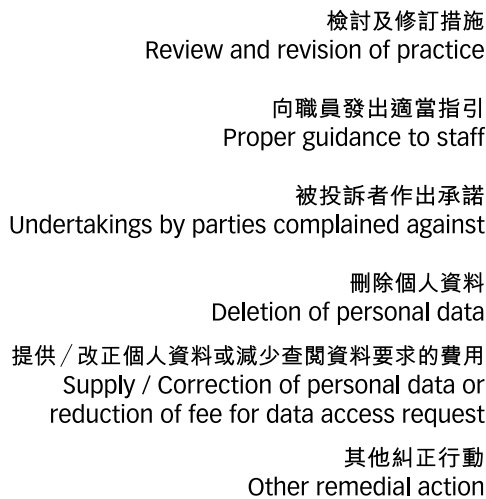
After handling many complaint cases against organisations in different industries, I realise that there is growing privacy awareness among the general public. It gives me great satisfaction to see cases resolved successfully through conciliation, and to see the data users understand and comply with the requirements under the Ordinance. This provides me with the incentive to pursue the mission of enforcement through education.

陳潤蓮  
個人資料主任  
Christine CHAN  
Personal Data Officer

### 經調停而終止調查個案的糾正行動性質

在22宗經公署調停而得到解決的個案中，被投訴者所採取的糾正行動，請見圖3.9(在同一宗個案中，被投訴者採取的糾正行動可能多於一項)。

圖3.9：糾正行動的性質

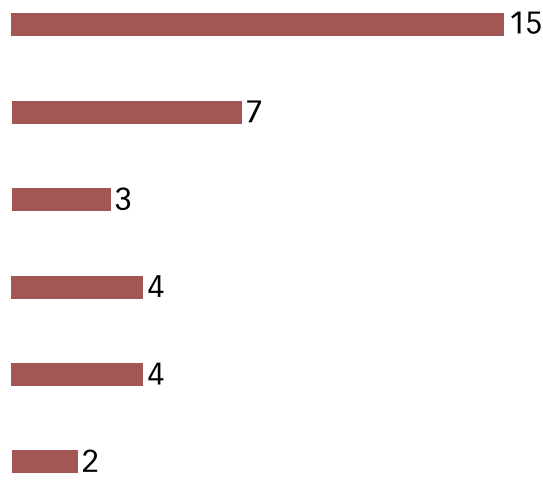


在34宗經公署調停而得到解決的個案或終止調查的個案中，私隱專員對13宗個案的被投訴者發出警告。

### Nature of Remedial Action in Conciliated and Discontinued Cases

The nature of remedial action taken by the parties complained against in the 22 cases resolved through conciliation are categorised in Figure 3.9. (note that more than one type of remedial action may have been taken by the party complained against in some cases).

Figure 3.9: Nature of remedial action



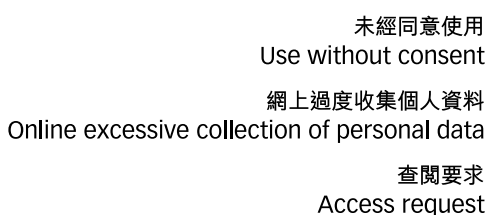
正式調查個案數目 Number of formal investigation cases

Of the 34 conciliated or discontinued cases, the Commissioner issued warning notices to the parties complained against in 13 cases.

### 違例事項的性質

在確定違例的七宗個案中，六宗涉及違反保障資料原則，一宗涉及違反條例中有關依從查閱資料要求的條文。這七宗個案所涉及違例性質的分類，請見圖3.10。

圖3.10：違例事項的性質



### Nature of Contravention

Among the seven cases where the requirements under the Ordinance were found to have been contravened, six cases involved a contravention of one of the Data Protection Principles; and one case involved a contravention of the requirements of the main body of the Ordinance relating to compliance with data access requests. The classification of the nature of all the contraventions involved in these seven cases can be found in Figure 3.10.

Figure 3.10: Nature of contravention



違例事項數目 Number of contraventions

## 執法行動

公署對違反條例規定的個案採取了執法行動。

在確定違反條例規定的七宗個案中，私隱專員向被投訴者發出執行通知，以制止或防止他們的違規行為。

## Enforcement Action

The PCPD takes enforcement action in cases of contravention of the requirements under the Ordinance.

In the seven cases found to involve contraventions of the requirements under the Ordinance, the Commissioner issued enforcement notices to the parties complained about to stop or prevent contraventions.

### 讚賞 Compliment

感謝你和貴署盡心協助我，並給我一個肯定。你我素不相識，我在貴署只是一個檔案編號，你也願意作出關懷體恤。

My heartfelt thanks to you and the PCPD's assistance and support. I feel that my case is treated with respect and genuine empathy, although I am a stranger to you, and only a case number in your filing.

曾小姐  
投訴人  
Ms TSANG  
Complainant

### 感言 Response

我記得當初投訴人是因某團體不當使用其個人資料而向公署求助；後來收到曾小姐的感謝函，是對我處理投訴工作的一大鼓勵及認同。以調停的方式處理投訴個案，往往會更有效解決投訴人和被投訴人之間的爭端；而以同理心理解市民的需要，則令我的工作更有意義。

The complainant sought help from the PCPD because she opined that her personal data was unduly used. After completing her complaint case, I received her letter of thanks. This is a recognition and encouragement of my work. Conciliation is always an effective option to deal with the dispute between the complainant and the party complained against. I believe a great empathy with the citizens will make my work more meaningful.



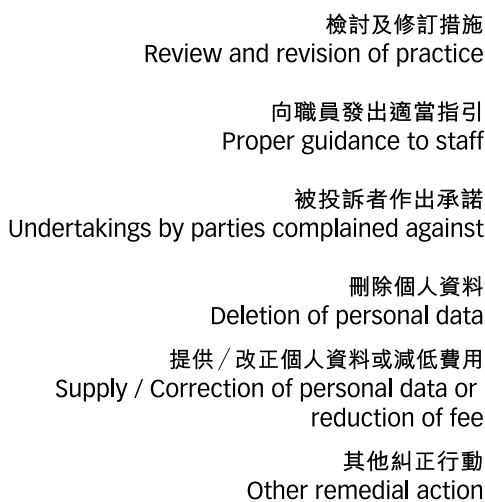
盧浩榮  
助理個人資料主任  
John LO  
Assistant Personal Data Officer

個案經調停而解決的的糾正行動性質

在本年報期間，共有257宗個案在初步查訊或調查期間，經公署調停便得到解決(包括235宗在初步查詢期間得到解決的個案，及22宗在調查期間得到解決的個案)，被投訴者對投訴人提出的問題作出了適當的糾正。被投訴者所採取的糾正行動，請見圖3.11(在一宗個案中，被投訴者採取的糾正行動可能多於一項)：

- 被投訴者修訂操作的行事方式，以免日後再發生同類違規事件(113宗)；
- 被投訴者向有關職員發出適當指引，確保他們遵從條例規定(99宗)；
- 被投訴者承諾停止導致被投訴的不當行為(93宗)；
- 刪除被投訴者不必要地收集或向第三者披露的個人資料(86宗)；
- 被投訴者按投訴人的翻 / 改正資料要求提供 / 改正個人資料，或減低依從查閱資料要求的費用(50宗)；
- 符合投訴人期望的其他糾正行動(20宗)。

圖3.11： 個案經調停而解決的糾正行動性質

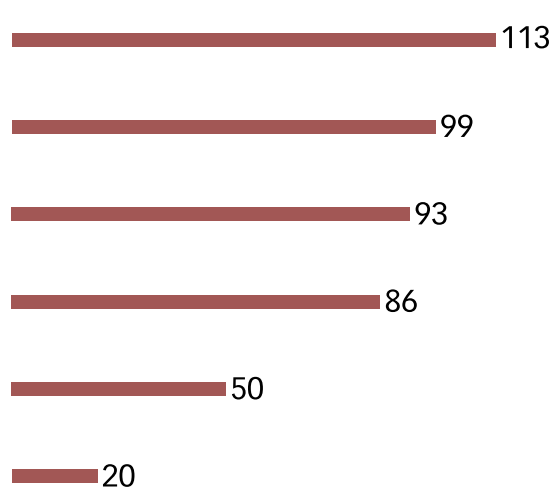


Nature of Remedial Action in Conciliated Cases

During the reporting period, 257 cases were resolved through conciliation (235 during the preliminary enquiries and 22 during formal investigations), i.e. the problems raised by the complainants were remedied by the parties complained about. The remedial actions taken by the parties complained against are categorised in Figure 3.11 (note that more than one type of remedial action may have been taken by the party complained about in some cases) and are summarised as follows:

- Revision of operational practices by the party complained about to prevent a similar breach in the future (113 cases);
- Proper guidance given by the party complained about to the staff concerned to ensure compliance with the Ordinance (99 cases);
- Undertakings by the party complained about to cease the malpractice leading to the complaint (93 cases);
- Deletion of personal data unnecessarily collected by the party complained about or disclosed to third parties (86 cases);
- Supply / correction of the personal data by the party complained about as per the complainants' data access/correction requests, or reduction in the fee for complying with the data-access requests (50 cases);
- Other remedial actions taken which met the complainants' expectations (20 cases).

Figure 3.11: Nature of remedial action in conciliated cases



投訴個案數目 Number of complaint cases

## 個案研究：指導資料使用者遵守條例規定

私隱專員可根據條例第39條拒絕對某投訴進行調查或決定終止調查。在這類個案中，私隱專員的決定及建議對資料保障仍可帶出正面的訊息，此有助資料使用者明白在實務上應如何提升個人資料的保障，以遵從條例的相關規定。

以下個案顯示資料使用者如何在私隱專員的指導下，採取適當措施改善其保障資料的做法。

## CASE STUDY: GUIDING DATA USERS TOWARDS COMPLIANCE

The Commissioner may decline to investigate a complaint or terminate an investigation under section 39 of the Ordinance. In such cases, the Commissioner's decision and recommendation can still have a positive impact by helping data users understand in practice how to enhance personal data protection in order to comply with the requirements under the Ordinance.

The following cases in the reporting year illustrate how data users complained about can improve their data protection practices by taking appropriate measures under the Commissioner's guidance.

**商戶不應強制客戶加入尊賞會員計劃，才可接受其產品保養及維修登記，亦不應收集加入計劃人士的完整出生日期資料 — 保障資料第1(1)及1(2)原則**

### 投訴內容

投訴人購買了某品牌的打印機，並欲透過售賣商戶(「該商戶」)的網頁，替產品登記保養及維修服務(「該登記」)。在這過程中，投訴人發現她必須登入該商戶的尊賞會員計劃(「該計劃」)的專頁，才能進行登記。由於投訴人並非該計劃的現有會員，她必須先登記成為該計劃的會員，及提供其個人資料，才可享有產品保養及維修服務。投訴人認為該商戶強制要她提供其個人資料，她亦不滿該商戶要求登記加入該計劃的人士提供其出生日期，因而向公署作出投訴。

該商戶澄清，客戶一般憑購物單據及產品記錄卡，已可享售後的保養及維修服務，惟該計劃的會員可獲取額外三個月的保養及維修服務。由於該登記是為該計劃的會員而設，故客戶若選擇就已購買的產品進行登記，則須先加入該計劃成為會員；然後在該商戶的網頁輸入相關會員帳號及密碼，進行登記。

A vendor should not compulsorily require customers to join its membership programme for registration of product maintenance and repair, and should not collect the full date of birth of individuals joining the programme – DPP 1(1) and 1(2)

### The Complaint

The Complainant purchased a printer and wanted to register for the maintenance and repair service ("the Registration") of the Vendor ("the Vendor") through the Vendor's webpage. However, the Complainant found that she had to log into the webpage of the Vendor's membership programme ("the Programme") before registering. As the Complainant was not a member of the Programme, she was required to provide her personal data for membership registration before applying for the maintenance and repair service. The Complainant said that the Vendor had unnecessarily required her to provide her personal data to join the Programme, including her date of birth. Hence, she lodged a complaint with the PCPD.

The Vendor explained that all customers could generally get the after-sale maintenance and repair service with their purchase invoice and product record card. However, to get an extra three months' maintenance and repair service, they had to join the Programme. As the Registration extension was offered only to members of the Programme, customers who wanted to get the extension had to become Programme members first and then register by entering their member account number and password on the Programme webpage.

至於收集加入該計劃人士的出生日期，該商戶解釋，客戶的出生年份有助他們分析市場趨勢及客戶的消費習慣，而出生月份是為了向客戶提供生日優惠或禮品。

#### 結果

私隱專員認為，客戶為其購買的產品進行保養及維修服務登記是消費者的基本權利，至於客戶是否商戶的尊賞會員計劃的會員，理應不影響客戶享有售後服務的權利。雖然該商戶解釋，持有購物單據及產品記錄卡的客戶，亦享保養及維修服務，該商戶最終接納私隱專員的建議，修改其網頁內容，註明客戶除了加入成為該計劃的會員，可享額外三個月的保養及維修服務外，仍可透過另一途徑獲取為期較短的保養及維修服務。

至於收集會員的出生日期，私隱專員認為，該商戶應讓登記加入該計劃的客戶得知收集該資料的目的（即為了分析市場趨勢及客戶的消費習慣，以及向會員提供生日優惠或禮品），及在客戶自願的情況下，才可收集他們的出生年份及月份。該商戶其後已停止收集會員的完整出生日期，改為只收集出生月份，並向公署承諾會銷毀早前所收集得的會員出生年份及日子。

Regarding the collection of the full date of birth of individuals joining the Programme, the Vendor explained that the year of birth was important for analysing market trends and customer consumption habits, and the month of birth was collected to provide birthday privileges or gifts to members.

#### Outcome

The Commissioner was of the view that registering for maintenance and repair service for purchased products was a basic right of customers. The right to receive after-sales service should not depend on whether customers are members of the Programme. Although the Vendor explained that its customers could get the standard maintenance and repair service with their purchase invoice and product record card, the Vendor accepted the Commissioner's recommendation by amending its webpage to specify that customers could receive the standard maintenance and repair service by producing their purchase invoice and product record card, but that they could receive the three months' extension only by joining the Programme.

Regarding the collection of members' full date of birth, the Commissioner recommended that the Vendor inform the customers joining the Programme of the purpose of collecting their personal data (i.e. for analysis of market trends and consumption habits, and for providing birthday privileges or gifts to members), and explain that it would collect their year and month of birth only with their voluntary consent. The Vendor stopped collecting the full date of birth of members. Instead, it now collects only the month of birth. It also undertook to destroy the records of year and date of birth of members previously collected.

## 過度收集月租車位申請人的個人資料 — 保障資料第(1)原則

### 投訴內容

投訴人向公署投訴某政府部門(「該部門」)在處理他的公共屋 停車場月租車位申請時，不必要地收集其住戶證明文件、駕駛執照及汽車第三者保險保單。

該部門向私隱專員解釋，由於公共屋 停車場的車位有限而需求又高，部門的政策是屋 住戶可優先獲批月租車位。故此，他們會要求車位申請者提供住戶證明文件以核實其身份。同時，為證明申請人是有需要使用泊車位，以避免出現濫用車位的情況，該部門亦有需要收集申請人的駕駛執照。

就汽車第三者保險保單而言，該部門解釋，這資料有助他們確定申請人是否已符合《汽車保險(第三者風險)條例》的相關規定，即申請人必須為其車輛備有一份有效的第三者風險保險，以確保在意外發生時，第三者的權益受到保障。

### 結果

就收集申請人的住戶證明文件及駕駛執照而言，私隱專員認為，該部門收集這些資料，明顯地是確認申請人的申請資格及優先次序，這與處理申請月租車位的目的直接有關，所收集的資料恰當、不超乎適度。

然而，就汽車第三者保險保單而言，由於《汽車保險(第三者風險)條例》並無要求管理停車場的機構，須確保停車場使用者已為其車輛備有有效的第三者風險保險；而收集這資料，與該部門考慮車位申請人的申請資格及優先次序，並無直接關係。私隱專員因而認為，該部門在考慮投訴人申請車位時收集他的汽車第三者保險保單，是違反了保障資料第1(1)原則。

因應這投訴個案，該部門已同意日後在處理月租車位申請時，停止收集申請人的汽車第三者保險保單，並刪除過往收集得的汽車第三者保險保單記錄。

## Excessive collection of the personal data of applicants for a monthly car park space – DPP1(1)

### The Complaint

The Complainant lodged a complaint with the PCPD against a government department (“the Department”) for the unnecessary collection of his tenant identification document, driving licence and third party insurance policy when processing his application for a space in his public housing estate’s monthly car park.

The Department explained to the Commissioner that due to the limited number of parking spaces and high demand, it was the Department’s policy to give priority to tenants of the estate. Car park applicants were required to provide tenant identification documents for identity verification. To prove that applicants actually needed the parking space for their own use and to prevent misuse, the Department also needed to collect a copy of their driving licence.

As regards motor vehicle third party insurance, the Department explained that it needed this information to ascertain whether applicants met the requirements under the Motor Vehicle Insurance (Third Party Risks) Ordinance, i.e. applicants must have valid insurance for third party risks to protect the third party’s right in case of accidents.

### Outcome

With regard to the collection of copies of applicants’ tenant identification document and driving licence, the Commissioner was of the view that it was obvious that the Department collected this information to confirm applicants’ eligibility and priority. The Commissioners considered this to be directly related to the handling of applications for monthly car park spaces and found the data collected to be adequate and not excessive.

As for the motor vehicle third party insurance policy, however, the Motor Vehicle Insurance (Third Party Risks) Ordinance did not require the management company of a car park to ensure that car park users had valid insurance for third party risks, and hence the collection of this data was not directly related to the Department’s consideration of the eligibility and priority of applicants. So the Commissioner held the view that the Department had contravened DPP1(1) in this respect.

As a result of this complaint case, the Department agreed to stop collecting applicants’ motor vehicle third party insurance policies when handling applications for monthly car park spaces in future and to destroy all the relevant records previously collected.



**銀行為執行盡職審查而收集現金支票持票人的香港身份證副本，屬超乎適度 — 保障資料第1(1)原則**

**投訴內容**

投訴人到某銀行兌現一張約港幣二萬元的現金支票，由於銀行職員已記錄了他的姓名及香港身份證號碼，他質疑該銀行是否有必要再收集其身份證副本。

該銀行向私隱專員解釋，根據香港金融管理局(「金管局」)發出的《打擊洗錢及恐怖分子資金籌集指引》，認可機構(包括該銀行)在替非賬戶持有人辦理現金交易(包括兌現現金支票)時，如現金總額達港幣12萬元或以上，需將進行交易人士的身份證明文件副本存檔，目的是執行預防詐騙及洗錢的盡職審查。然而，該銀行考慮到日常業務需要，及為防止不法者以一連串較低金額的相連交易，以避開金管局所訂的較高門檻，該銀行因而將上述現金總額設定為一個遠低於港幣12萬元的金額，規定職員在涉及該金額或以上的交易時，必須收集現金支票持票人的身份證明文件副本。由於投訴人並非該銀行的賬戶持有人，而其交易金額超過該銀行自行定出的較低門檻，該銀行為了執行盡職審查，遂收集投訴人的香港身份證副本。

**結果**

私隱專員認為，既然金管局已定下一套執行盡職審查的標準供業界依從，該銀行不應因為其日常業務很少涉及大額現金支票交易，而訂出一個較金管局為低的金額。因此，該銀行在並非為了符合金管局的要求，而收集現金支票持票人的香港身份證副本，屬超乎適度，違反了保障資料第1(1)原則的規定。

經公署介入後，該銀行已修訂該規定，將該金額提高至港幣12萬元，即與金管局的要求一致。此外，該銀行亦承諾銷毀過去在涉及金額低於港幣12萬元的交易中，向現金支票持票人收集得的身份證明文件副本。

**Unnecessary collection of a copy of a cash cheque bearer's Hong Kong identity card ("HKID") for due diligence by a bank – DPP1(1)**

**The Complaint**

The Complainant cashed a cash cheque of about HK\$20,000 at a bank. As the bank recorded his name and HKID card number, he asked why it was necessary to take a copy of his HKID card.

The bank explained to the Commissioner that according to the Guideline on Anti-Money Laundering and Counter-Terrorist Financing issued by the Hong Kong Monetary Authority ("HKMA"), authorised institutions (including banks) need to file copies of identification documents of customers who are non-account holders when handling cash transactions (including encashing cash cheques) equal to or exceeding an aggregate value of HK\$120,000 to conduct customer due diligence for the prevention of fraud and money laundering. However, to cope with its daily business needs and prevent evasion of the high threshold set by the HKMA by a series of low-amount linked transactions, the bank set its own aggregate amount far below HK\$120,000 and required its staff to collect copies of identification documents of cash cheque bearers when transactions exceeded this amount. As the Complainant was not an account holder of the bank and his transaction exceeded the bank's threshold, the bank collected a copy of the Complainant's HKID card for customer due diligence.

**Outcome**

In the Commissioner's view, as the HKMA had established an industry standard for compliance with customer due diligence requirements, the bank should not set its own amount lower than that of the HKMA solely because it rarely had to handle cash cheques worth HK\$120,000 or more. Hence, the bank's collection of a copy of the cash cheque bearer's HKID card for amounts below the HKMA's requirement was excessive and contravened DPP1(1).

After the PCPD's intervention, the bank revised its practice by raising the amount to HK\$120,000 (i.e. the HKMA's requirement). Moreover, the bank undertook to destroy all copies of identification documents previously collected from bearers of cash cheques under HK\$120,000.

## 網上商店不應未經顧客同意而把其個人資料披露予另一顧客，以進行貨品交換 — 保障資料第3原則

### 投訴內容

顧客A向一間網上眼鏡公司訂購隱形眼鏡時，提供了其個人資料，包括姓名、流動電話號碼及送貨地址。該公司職員其後通知顧客A，他們把她的隱形眼鏡誤送予顧客B，建議顧客A自行與顧客B換回隱形眼鏡。該公司未經顧客A的同意，把其資料披露予顧客B，以致她的流動電話號碼收到顧客B的短訊，要求換回隱形眼鏡。因此顧客A向公署投訴該公司。

該公司向私隱專員解釋，由於顧客B急需取回隱形眼鏡，他們建議兩位顧客自行換回隱形眼鏡。該職員向兩位顧客發出電郵，詢問他們對該建議的意見。顧客B表示，同意該建議及同意該公司把其聯絡資料轉交顧客A。然而，該職員誤以為是顧客A同意該建議，因而誤把其資料披露予顧客B。

### 結果

由於該公司收集顧客A的個人資料的原本目的，是為顧客A的網上訂購提供服務。私隱專員認為，該公司未取得顧客A的同意，大意地把顧客A的個人資料披露予顧客B，以進行貨品交換，違反了保障資料第3原則。

該公司接受私隱專員的建議，致函顧客B要求刪除顧客A的個人資料。該公司亦向職員發出指引，提醒他們把顧客的個人資料保密，在向第三者披露顧客的個人資料前，必須取得同意。

An online shop should not disclose a customer's personal data to another customer for product exchange without consent – DPP3

### The Complaint

Customer A provided her personal data, including her name, mobile phone number and delivery address, to an online Optical Company ("the Company") when she placed an order for contact lenses. She was later informed by the Company's staff that they had mistakenly delivered her contact lenses to Customer B and delivered Customer B's lenses to her. The staff member suggested Customer A exchange the contact lenses direct with Customer B. The Company then disclosed Customer A's personal data without her consent to Customer B, resulting in her receipt of an SMS message from the latter to her mobile phone number asking her to exchange the contact lenses. Customer A lodged a complaint to the PCPD about the Company.

The Company explained that as Customer B needed the correct contact lenses urgently, they sent an email to both Customer A and Customer B suggesting they swap the contact lenses between themselves and asking for their views on the suggestion. The Company mistakenly recorded Customer A as having agreed to the suggestion, so her contact details were wrongly passed on to Customer B. In fact, it was Customer B who had agreed to the suggestion.

### Outcome

Given that the Company's original purpose for collecting Customer A's personal data was to deliver her online order, the Commissioner took the view that the inadvertent disclosure of Customer A's personal data to Customer B by the Company for the purpose of product exchange, without Customer A's prior consent, violated DPP3.

The Company accepted the Commissioner's recommendations and wrote to Customer B to request the deletion of Customer A's personal data. They also issued guidelines to their staff reminding them to keep customers' personal data confidential and to obtain their customers' prior consent before disclosing their personal data to a third party.

## 電腦應用系統出現程式錯誤，以致員工的個人資料外洩 — 保障資料第4原則

### 投訴內容

投訴人的同事登入其受聘機構的內聯網，使用一個供員工申請年假用的應用系統(「該系統」)，卻被錯誤連接到投訴人的帳戶，因此，能查看該系統內關於投訴人的個人資料。就此，投訴人向公署投訴該機構未有保障其個人資料。

該機構向私隱專員解釋，事件源於該系統的一項程式錯誤，以致投訴人與該名同事同時登入該系統時，該名同事可查看該系統內屬於投訴人的個人資料。該機構表示，儘管他們已定期進行保安漏洞掃描，以及每半年為獲授權的用戶帳號，進行認證，以確保只有獲授權的員工，才能登入有關系統。然而，由於該錯誤只在特定的情況下才會顯現，故他們未能在上述的檢查中偵測該錯誤。

### 結果

本案的情況看來只屬個別事件，該機構已採取行動，修正錯誤，並進行測試，以確保日後再有兩位使用者同時登入該系統時，不會再出現本案的情況。

鑑於資訊科技的發展急速，為系統保安工作帶來極大挑戰。在私隱專員的建議下，該機構同意不時檢視及優化資訊系統的保安措施，包括檢查其他採用類似軟件的系統，評估類近的程式錯誤會否同時對其他系統構成影響，以便作出修正。長遠而言，該機構表示，會強化其資料保安系統，以提高對員工個人資料私隱的保障。

A programme error in a computer application system led to leakage of employees' personal data – DPP4

### The Complaint

When a colleague of the Complainant logged into a leave-application system ("the System") in the intranet of his employer, he was mistakenly connected to the Complainant's account, enabling him to see the Complainant's personal data in the System. The Complainant therefore complained to the PCPD that his employer had failed to safeguard his personal data.

The employer explained to the Commissioner that due to a programming error in the System, the Complainant's personal data was disclosed to his colleague when they both logged into the System at the same time. The employer stated that it conducted vulnerability scans regularly and authentication of authorised user accounts semi-annually to ensure that only authorised staff could log into the System. However, as the programme error occurred under specific conditions, it could not detect the error in the scans or account checks mentioned above.

### Outcome

The incident appears to have been an isolated one. The employer rectified the error and conducted tests to ensure that when two users log into the System at the same time in future, the same incident will not occur.

In view of the great challenges brought by the rapid growth of information technology to system security, the employer, on the Commissioner's recommendation, agreed to review and optimise the security measures of its information system from time to time, including checking other systems that use similar software, to evaluate if they have similar programming errors and if so, to rectify them. In the long run, the employer said it would also strengthen its data security system to enhance the protection of its staff's personal data.

## 檢控及定罪個案

在本年報期間，一名前保險代理因在私隱專員調查他誤導投訴人關於保單的承保人身份時，向私隱專員作出虛假陳述，被控違反條例第50B(1)(c)(i)條。此外，該代理亦被控違反《盜竊罪條例》及《刑事罪行條例》的罪名。

在2014年12月於屯門裁判法院的聆訊中，該代理承認控罪，被判監禁四個星期。

今次是條例自1996年生效以來，首宗在私隱專員執行其法定職能時因被誤導，而被告被判違反條例及定罪的個案，亦是首宗判監的個案。

## PROSECUTION AND CONVICTION CASES

In the reporting year, a former insurance agent was charged with the offence under section 50B(1)(c)(i) of making a false statement to the Commissioner during an investigation into his misleading a complainant regarding the identity of the issuer of the insurance policy to be sold to the complainant. The agent was also charged with other criminal offences under the Theft Ordinance and the Crimes Ordinance.

At the hearing in December 2014 at the Tuen Mun Magistrates' Court, the agent pleaded guilty to the charges and was sentenced to four weeks' imprisonment.

Since the Ordinance came into force in 1996, this was the first conviction for misleading the Commissioner in discharging his statutory functions and the first conviction with a custodial sentence.

### 長期服務員工 Long Serving Staff

時光飛逝，屈指一算我已在公署工作了超過15年。個人資料私隱由當初沒甚麼人了解和關心，到現在差不多每天讀報也發現有海外或本地相關的報道；加上資訊科技的發展一日千里，保障個人資料私隱的工作，變得更多元化、有趣和充滿挑戰。我慶幸我加入了公署，我亦深深欣賞現任及歷屆私隱專員對保障個人資料私隱的決心及無私的奉獻。

How time flies! I have been working with the PCPD for over 15 years. In the past, few people were concerned about personal data protection. But nowadays, we can read privacy-related stories in local or overseas news media almost every day. The job of personal data protection has become very diverse, interesting and challenging. I feel proud to be a part of the PCPD and greatly appreciate the determination and selfless devotion to protecting personal data privacy by the current commissioner and his predecessors.

陳美儀  
高級個人資料主任  
Amy CHAN  
Senior Personal Data Officer



從調查投訴中學習

LESSONS LEARNT FROM COMPLAINTS

投訴個案1

一名律師及一間律師行在傳真載有個人資料的法律文件時，沒有採取足夠的保障設施，以保障資料免受未經准許的查閱 — 保障資料第4原則

投訴內容

投訴人是一間保險公司的僱員，他亦與一位律師經營另一業務。投訴人與該律師其後發生業務糾紛。該律師指示由她擔任顧問的律師行作為其法律代表，處理這宗糾紛。一日，該律師行未經投訴人同意，就該業務糾紛把一些載有投訴人個人資料的法庭文件，傳真至投訴人受僱的公司。在該保險公司的傳真機，是可以由其他使用者使用的，而傳真有關文件時並無任何加密。

該律師行承認，為向投訴人送達文件，而把文件傳真至投訴人的僱主的傳真號碼，是違反其政策；而該律師聲稱，把投訴人的文件送往保險公司地址，以及他們合營業務的辦公地址，他均拒絕接收。她聲稱沒有其他方法，唯有指示該律師行把文件傳真至投訴人的僱主的傳真號碼。

結果

以沒有加密的方式，把載有投訴人個人資料的法律文件傳真至投訴人的僱主的傳真號碼。在這事件中，誰是資料使用者？

調查顯示，該律師把其業務糾紛轉介該律師行處理及追討投訴人後，亦成為該律師行的顧問，代表該律師行處理這宗業務糾紛。事實上，她就是傳真沒有加密的文件的人。因此，該律師行嘗試跟事件保持距離，聲稱只有該律師(不是律師行)是資料使用者。

該律師把其業務糾紛轉介該律師行，並指示該律師行追討投訴人，因此該律師是該律師行的客戶。當該律師指示該律師行把那些沒有加密的文件傳真至投訴人的僱主時，她是管有投訴人的個人資料，因此是資料使用者。

在這個案中，該律師行作為該律師的法律代表，在接獲及執行該律師的指示，把文件傳真至投訴人的僱主後，亦是資料使用

Complaint Case 1

A solicitor and a law firm failed to take adequate measures to safeguard personal data in legal documents against unauthorised access when sending the documents by fax – DPP4

The Complaint

The Complainant was an employee of an insurance company, and he separately owned a business with a solicitor. The Complainant and the solicitor subsequently had a dispute over the business. The solicitor instructed the law firm for which she worked as a consultant to act as her legal representative to handle the dispute. One day, without the Complainant's consent, the law firm faxed to a fax number of the Complainant's employer some legal documents in connection with the disputed business which contained the Complainant's personal data. The fax machine at the insurance company was accessible to other users, and the documents were faxed without any encryption.

The law firm admitted that faxing the legal documents to the Complainant to the fax number of the Complainant's employer contravened its policy, but the solicitor claimed that the Complainant had refused to accept the documents that were served on him personally at the insurance company's address or the office address of their disputed business. She claimed to have no alternative but to instruct the law firm to fax the documents to the fax number of the Complainant's employer.

Outcome

Who was the data user when sending the unencrypted legal documents which contained the Complainant's personal data to a fax number of his employer?

The investigation showed that the solicitor, after referring her business dispute to the law firm to deal with and pursue the Complainant, also worked as the law firm's consultant to handle this business dispute on behalf of the law firm. In fact, she was the one who faxed the unencrypted document in question. The firm therefore tried to distance itself by claiming that only the solicitor, not the firm, was the data user.

In referring her business dispute to the law firm and instructing the law firm to pursue the Complainant, the solicitor was a client of the law firm. When the solicitor instructed the law firm to fax the unencrypted documents to the Complainant's employer, she had control of the Complainant's personal data and was the data user.

But the law firm was also the data user in this case, as it was the solicitor's legal representative after having received and subsequently executed the instructions from the solicitor to fax the

者。這可從該律師行向該律師與投訴人合營的公司發出的服務帳單，可作證明，而它在致公署的回信中，亦承認這點。

公署認為根據條例第65(2)條，該律師行須對其顧問所作的違規行為負上責任，不論傳真一事，實際上是由該律師或該律師行的其他顧問作出。若傳真一事是由該律師行的其他律師或僱員作出，根據第65(1)條，該律師行作為資料使用者，仍須負上責任。

documents to the Complainant's employer. There was proof of this relationship in the service charges billed by the firm to the company co-owned by the solicitor and the Complainant; and in its admission in its reply letter to the PCPD.

The PCPD was of the view that the law firm was responsible for the offending acts of its consultant, under section 65(2) of the Ordinance, irrespective of whether the faxing was actually done by the solicitor or by other consultants of the firm. If the faxing was done by the law firm's other solicitors or employees, the law firm would still be held responsible as the data user under section 65(1).

### 讚賞 Compliment

香港是亞洲中最早訂立全面的資料私隱法律的地區。在私隱標準、執法架構和應用，及透明度的整體評估方面，香港完全可跟其他管轄區媲美。

Hong Kong has the longest-established comprehensive data privacy law in Asia... To make an overall assessment of its privacy standards, enforcement structures and their use, and transparency, Hong Kong compares well with other jurisdictions.

Professor Graham Greenleaf  
Author of Asian Data Privacy Laws (OUP) 2014

## 投訴個案2

### 私家醫院在依從病人的查閱資料要求時，收取超乎適度的費用 — 第28(3)條

#### 投訴內容

投訴人在一間私家醫院進行小手術。由於他不滿該醫院的服務，他向該醫院作出投訴，並提出查閱資料要求，索取其醫療記錄。

該醫院就九頁文件向投訴人收取超過三千港元。投訴人認為費用超乎適度。

#### 結果

根據行政上訴委員會上訴案件第37/2009號的決定中的原則，資料使用者只可向要求者收取跟依從查閱資料要求「直接有關及必需」的費用。資料使用者不應以商業準則收取費用。任何超出循規成本的費用，會被視為超乎適度。

九頁文件的收費超過三千港元，表面看來過高，故該醫院有責任證明收取的費用，不是超乎適度。然而，在調查過程中，該醫院拒絕解釋或估算處理該查閱資料要求的職員的時薪，以及所花的時間。由於該醫院沒有特別就它在條例第28(3)條下的責任而制定政策或程序，該醫院試圖以在大量病歷中查找投訴人的醫療記錄，及要加倍小心核實有關記錄所涉及的「巨大」職員成本，作為收費合理的理由。但考慮到有關文件只是關於投訴人在很短時期(兩日)的記錄，而且該醫院應有適當的病歷索引系統，因此，私隱專員認為，找出有關文件並不需要很長時間。

由於該醫院沒有提供依從該查閱資料要求所涉的人力成本分項，以及如何計算費用的政策/程序，私隱專員認為，該醫院未能解除其舉證責任，證明就該查閱資料要求收取三千港元的費用不是超乎適度。因此，該醫院違反了條例第28(3)條。

該醫院在調查過程中，已把款項退回投訴人。私隱專員亦向該醫院送達執行通知，指令它根據行政上訴委員會上訴案件第37/2009號的決定中的原則，參考「最少的直接及必需成本」的測試，檢討其現行依從查閱資料要求的收費標準。

## Complaint Case 2

### A private hospital charged an excessive fee for complying with a patient's data-access request – Section 28(3)

#### The Complaint

The Complainant was a patient in a private hospital for minor surgery. He was dissatisfied with the service at the hospital, so he lodged a complaint to the hospital and made a data-access request ("DAR") for his medical records.

The hospital charged the Complainant over HK\$3,000 for a document of nine pages. The Complainant considered the fee to be excessive.

#### Outcome

According to the principle laid down in the decision of the case of Administrative Appeal No. 37/2009, a data user is allowed to charge the requester only for costs which are "directly related to and necessary for" complying with a data-access request. A data user should not charge a fee on a commercial basis. Any fee that exceeds the costs of compliance would be considered excessive.

As the charge of over HK\$3,000 for nine pages appeared, on the face of it, to be exorbitant, the burden was on the hospital to prove that the fee it had charged was not excessive. However, in the course of the investigation, the hospital refused to account for or estimate the hourly rate of its staff and the time spent by each staff member concerned in processing the DAR. In the absence of policies or procedures that specifically address its obligation under section 28(3) of the Ordinance, the hospital attempted to justify the fee on the basis of the "substantial" staff costs incurred in tracing and retrieving the Complainant's medical records among the vast number of medical records held by the hospital, and in verifying the medical records with extra care and attention. However, taking into account the fact that the documents only concerned the Complainant's records over a very short period of time (two days) and that the hospital should have a proper indexing system for its medical records, the Commissioner did not accept that an extensive search over a long period of time was required to locate the documents concerned.

As the hospital failed to provide a breakdown of the labour costs incurred in complying with the DAR and its policies and procedure governing how fees should be calculated, the Commissioner took the view that the hospital had failed to prove that the fee of HK\$3,000 for the DAR was not excessive and that the hospital had thus contravened section 28(3) of the Ordinance.

The hospital refunded the fee to the Complainant during the investigation. The Commissioner served an enforcement notice on the hospital, directing it to review its current charging scale for complying with DARs with reference to the test of "minimum direct and necessary costs" in accordance with the principle laid down in the decision of Administrative Appeal No. 37/2009.

### 投訴個案3

私隱專員向重複違反保障資料第3原則的大廈業主立案法團，送達執行通知

#### 投訴內容

一名居民因其單位的維修保養問題與大廈的業主立案法團發生糾紛後，欠交管理費。該業主立案法團聘請律師向該居民發信追討欠款。信中表示，業主立案法團打算對該居民採取法律行動，信內載有該居民的全名、地址及尚欠的管理費詳情。該業主立案法團在大廈的大堂張貼該信的副本。該業主立案法團表示，展示該信是為了提醒該居民繳付欠款。

該業主立案法團之前曾被另一居民投訴，因為它未經資料當事人同意而不必要地展示個人資料。在之前的投訴中，該業主立案法團曾承諾在公眾地方展示任何文件前，會刪除可識別居民身份的資料，當時私隱專員向該業主立案法團發出警告。

#### 結果

由於該律師發出的信件已寄給該居民，該業主立案法團展示該信件以作提醒，是不必要的。如該業主立案法團真的希望提醒該居民，可以採取私隱侵犯程度較低的方法，例如，把信的副本放入該居民的信箱。該業主立案法團在公眾地方展示該信件，是有意令該居民大為尷尬，而事實上亦做到了。私隱專員認為該業主立案法團違反了保障資料第3原則，因為令該居民尷尬這個目的與最初收集該居民個人資料的目的無關。儘管私隱專員之前曾發出警告，但該業主立案法團仍在類似情況中重複違反保障資料第3原則。因此，私隱專員向該業主立案法團送達執行通知，指令它制定政策及程序，以防止日後再發生類似的違規情況。

### Complaint Case 3

The Commissioner served an enforcement notice on the incorporated owners of a building after repeated contraventions of DPP3

#### The Complaint

A resident of a building defaulted on the management fees after he had a dispute with the Incorporated Owners of the building ("IO") over the repair and maintenance of his flat. The IO engaged a solicitor to issue the resident with a letter to recover the outstanding fees. The letter stated that the IO intended to take legal action against the resident, and it also contained the resident's full name and address, and the details of the outstanding management fees. The IO posted a copy of the letter in the lobby of the building. The IO stated that the letter was displayed in order to remind the resident to pay the outstanding fees.

The IO had previously been the subject of a complaint by another resident for displaying personal data unnecessarily without the data subject's consent. In the previous complaint, the IO undertook to remove information that might identify a resident before displaying any documents in the public area, and the Commissioner then gave the IO a warning.

#### Outcome

As the original letter issued by the solicitor had already been mailed to the resident, it was unnecessary for the IO to display the letter as a reminder. If the IO really wished to remind the resident, it could have done so in a less privacy-intrusive manner, such as by putting a copy of the letter in the resident's mailbox. By displaying the letter in public, the IO caused great embarrassment to the resident. The Commissioner opined that the IO had contravened DPP3, as the aim of embarrassing the resident was not related to the original purpose of collecting the resident's personal data. In addition, it was a repeated contravention of DPP3 by the IO, despite the Commissioner's previous warning in similar circumstances. In view of this, the Commissioner served an enforcement notice on the IO directing it to formulate a policy and procedure to prevent a similar contravention in the future.



#### 投訴個案4

#### 獸醫診所出售寵物食品時，過度收集顧客的個人資料 — 保障資料第1(1)原則

##### 投訴內容

一名貓主向一間獸醫診所購買貓糧時，被要求提供全名、電話號碼及香港身份證號碼。他之前曾向這間診所購買貓糧，但毋須提供任何個人資料。他的貓亦不是這間診所的病人。該名貓主認為，純粹為購買貓糧而收集其個人資料，尤其是身份證號碼，屬超乎適度。

雖然該名貓主所購買的貓糧，不是須由獸醫處方的特別食品，但該診所表示希望能識別貓主，以便日後跟進貓兒的健康狀況。

##### 結果

身份證號碼屬敏感的個人資料，不應隨便收集。資料使用者只可在私隱專員於《身分證號碼及其他身分代號實務守則》中訂明的情況，才可收集個人的香港身份證號碼。由於該診所不能根據該實務守則解釋其收集身份證號碼的做法是合理的，私隱專員裁定該診所違反了保障資料第1(1)原則。在調查的過程中，該診所已停止收集顧客的香港身份證號碼，並銷毀了之前所收集的記錄。因此，私隱專員決定不向該診所送達執行通知，但發出警告，提醒它在收集個人資料時依從條例的規定。

#### Complaint Case 4

#### Excessive collection of customers' personal data by a veterinary clinic when selling pet food – DPP1(1)

##### The Complaint

A cat owner was requested to provide his full name, telephone number and Hong Kong Identity Card (HKID) Card Number when he purchased cat food from a veterinary clinic. He had bought cat food from the clinic before, but he was not required to provide any personal data on previous occasions. The owner's cat was not a patient of the clinic either. The owner felt that the collection of his personal data, in particular his HKID Card Number, was excessive for the sole purpose of purchasing cat food.

Although the cat food bought by the owner was not special diet pet food that required a prescription from a veterinarian, the clinic stated that it wished to be able to identify the cat owner and follow up with him on the health condition of the cat in the future.

##### Outcome

As a HKID Card Number is a sensitive piece of personal data, it should not be collected lightly. A data user may only collect a HKID Card Number from an individual in the circumstances permitted under the Code of Practice on the Identity Card Number and other Personal Identifiers prescribed by the Commissioner. As the clinic could not justify its collection of the complainant's HKID Card Number under the Code of Practice, the Commissioner held that the clinic had contravened DPP1(1). During the investigation, the clinic ceased the practice of collecting customers' HKID Card number and destroyed the records that it had previously collected from pet owners. Hence, the Commissioner decided not to serve an enforcement notice, but issued a warning to the clinic reminding it to comply with the Ordinance in the collection of personal data.

## 根據第48(2)條發表的調查報告

### 調查報告：外籍家庭傭工中介網站過度收集及在網上披露個人資料

私隱專員對10間外籍家庭傭工中介公司(「外傭中介公司」)主動展開正式調查，以確定它們向外籍家庭傭工申請人(「申請人」)收集個人資料，及在其網站披露有關個人資料是否屬必需而不超乎適度。這些外傭中介公司是根據《僱傭條例》註冊，主要業務是為準僱主介紹有意來港工作的外傭。

調查源於私隱專員留意到很多外傭中介公司在其網站展示申請人的大量個人資料。除此之外，外傭中介公司為了向準僱主介紹申請人，亦不必要地展示申請人的家屬及前僱主的個人資料。

下表臚列外傭中介公司所收集，及部分在網上披露的申請人個人資料：

<p>A 作識辨申請人身份及聯絡之用的資料 申請人的姓名、護照號碼、香港身份證號碼(如申請人曾在港工作)及住址</p>	<p><b>Identification and contact information of the Applicants</b> The Applicant's name, passport number, Hong Kong Identity Card ("HKID") number (if the Applicant has worked in Hong Kong) and address</p>
<p>B 供準僱主挑選合適家傭的資料 申請人的相片、國籍、身高、體重、年齡、工作經驗、學歷、生活習慣(例如是否吸煙者)、宗教、婚姻狀況、子女數目、家中排行及兄弟姊妹數目</p>	<p><b>Information to facilitate the selection of suitable foreign domestic helpers by prospective employers</b> The Applicant's photo, nationality, height, weight, age, work experience, education level, personal habits (e.g. smoking), religion, marital status, number of children, and number of siblings, and the Applicant's ranking of the Applicants</p>
<p>C 家屬的個人資料 申請人的家屬姓名、年齡及職業</p>	<p><b>Personal data of family members</b> The name, age and occupation of the Applicant's family members</p>
<p>D 前僱主的個人資料 申請人的前僱主姓名、國籍、職業、住址、電話號碼、家庭成員數目及子女年齡</p>	<p><b>Personal data of former employers</b> The name of Applicant's former employer(s), along with their nationality, occupation, address, telephone number, number of family members and age of children</p>

## PUBLICATION OF INVESTIGATION REPORT UNDER SECTION 48(2)

### Investigation Report: Excessive Collection and Online Disclosure of Personal Data by Recruitment Agencies Placing for Foreign Domestic Helpers

The Commissioner initiated formal investigations against 10 employment agencies for foreign domestic helpers (the "Employment Agencies") to ascertain whether the collection of personal data from foreign domestic helper applicants (the "Applicants") and the disclosure of such personal data on their websites was necessary and not excessive. The employment agencies were registered under the Employment Ordinance, and their business was to recruit overseas job seekers for placement as domestic helpers with employers in Hong Kong.

The investigations stemmed from the Commissioner's observation that a number of employment agencies were unnecessarily displaying on their websites extensive personal data provided by the Applicants for the purpose of introducing the Applicants to prospective employers. This included the personal data of the Applicants, their family members and their former employers.

Table below lists the personal data of the Applicants collected and partially disclosed online by the Employment Agencies.

調查結果

Findings of the investigation



公署的調查揭示，外傭中介公司透過申請表格收集申請人、其家屬及其前僱主的個人資料。外傭中介公司有必要收集該些個人資料，以協助這些申請人成功找尋工作，及符合勞工處和入境事務處的相關程序。但當中並不應包括申請人家屬的個人資料(姓名、年齡及職業)。申請人成功獲聘用後，外傭中介公司或僱主需要收集其家屬的資料作緊急聯絡之用，這是可以理解的。但獲聘用的外傭應在自願情況下提供家屬資料，而不應該在招聘初期被要求提供該資料。因此，私隱專員總結，外傭中介公司收集家屬的個人資料屬不必要，構成過度收集個人資料，因而違反保障資料第1(1)原則的資料收集規定。

而本案發現最大的問題是該些外傭中介公司在其網站展示申請人、其家屬及其前僱主(包括香港僱主)的個人資料。

外傭的工作性質有別於其他工種，她們需要長時間與僱主及其家庭成員共同生活，朝夕相對的程度猶如家人般關係密切。因此，私隱專員接納該些外傭中介公司為協助準僱主挑選合適家傭，而在網上披露大部分申請人提供的個人資料(包括其相片)。然而，私隱專員不認同外傭中介公司在網上披露申請人的姓名、住址、護照號碼或香港身份證號碼。他認為，這些資料無助準僱主挑選合適外傭。

The PCPD's investigation revealed that the Employment Agencies collected in prescribed forms the personal data of the Applicants, members of their families and former employers. To enable successful job placement and to meet the procedural requirements imposed by the Labour Department and the Immigration Department, the collection of some of the data was necessary, but not the personal data (name, age and occupation) of the Applicants' family members. Conceivably, after a placement is confirmed, the Employment Agency or employer might wish to obtain from the selected employee a named member of her family as an emergency contact. In the circumstances, the selected employee might provide the requested data on a voluntary basis. But there should be no obligation for her to provide such data at the outset. The Commissioner therefore concluded that the Employment Agencies' collection of the personal data of family members was unnecessary and amounted to excessive collection of personal data, thus contravening DPP1(1) on data collection.

The main problem revealed in the investigation was Employment Agencies' posting on their websites the personal data provided by the Applicants, which related to the Applicants themselves, their family members and their past employers, including Hong Kong employers.

One of the unique aspects of being a domestic helper in Hong Kong is that they live with the family of their employer and are often treated as a member of the family, interacting intimately with all family members day in and day out. The Commissioner therefore accepted that posting most of the personal data provided by the Applicants on the Employment Agencies' websites, including their photos, helped prospective employers screen helpers. However, posting the Applicants' names, addresses and passport and/or HKID Card numbers was not acceptable because it was inconceivable that this data was instrumental in the prospective employer's initial selection process.

基於同一原因，在網上披露申請人家屬的個人資料（例如姓名、年齡及職業）及其前僱主的姓名及住址也是不被接納的。因此，私隱專員認為外傭中介公司違反了保障資料第3原則的資料使用規定。

### 執行通知及建議

私隱專員向外傭中介公司分別送達執行通知，指令它們停止收集及披露有關個人資料。外傭中介公司其後依從了執行通知的指令。

### 確立行業做法

香港約有33萬名外傭。私隱專員發表調查報告可以對外傭中介公司有關收集及在網上披露個人資料的做法，作出具規範性的指引。此舉獲業界歡迎。其後，公署聯同有關的行業協會，特別為外傭中介公司的營運者舉辦了三場教育講座，詳細解釋條例的規定及調查報告的含意。

#### 調查報告：

[www.pcpd.org.hk/tc\\_chi/enforcement/commissioners\\_findings/investigation\\_reports/files/R14\\_1382\\_c.pdf](http://www.pcpd.org.hk/tc_chi/enforcement/commissioners_findings/investigation_reports/files/R14_1382_c.pdf)

For the same reason, displaying the personal data (e.g. name, age and occupation) of the Applicants' family members and past employers' names and addresses on the websites was not acceptable. The Commissioner therefore found the Employment Agencies' in contravention of DPP3 on data use.

### Enforcement notice and advice

An enforcement notice was served on each of the Employment Agencies directing them to stop collecting and disclosing the personal data concerned. The Employment Agencies subsequently complied with the enforcement notice.

### Establishing industry practice

There were a total of about 330,000 foreign domestic helpers in Hong Kong. Through publication of the investigation report, the Commissioner has in effect provided guidelines to all Employment Agencies in respect of their collection and online disclosure of personal data. This approach was favourably received by the industry. Subsequently, in conjunction with related trade associations, the PCPD held three educational seminars for all operators of employment agencies for foreign domestic helpers. They served to explain in detail the requirements under the Ordinance and the implications of the investigation report.

#### Investigation Report:

[www.pcpd.org.hk/english/enforcement/commissioners\\_findings/investigation\\_reports/files/R14\\_1382\\_e.pdf](http://www.pcpd.org.hk/english/enforcement/commissioners_findings/investigation_reports/files/R14_1382_e.pdf)

### 調查報告：補習中介網站在網上向導師收集超乎適度的個人資料

私隱專員主動展開正式調查，了解六個由五間公司經營的補習中介網站（「該些網站」）在導師登記過程中，收集導師的身份證號碼及聯絡人資料，是否屬超乎適度。該些網站在網上收集求職的補習導師及徵求私人補習服務的家長/學生的個人資料，然後根據他們提出的要求和條件，作出配對。該些網站在成功作出配對後，可賺取相等於兩星期補習學費的佣金。

調查源於一宗對其中一個補習中介網站的投訴，該網站收集登記導師的身份證號碼及聯絡人資料，包括聯絡人的姓名、電話號碼及與導師的關係。公署在調查過程中，亦隨機檢視了其他五個同樣提供補習中介服務的網站，以了解它們收集登記導師的個人資料的情況。公署發現，該五個網站均收集導師的身份證號碼，其中四個網站同時收集導師的聯絡人資料，包括聯絡人的姓名、電話號碼及與導師的關係。

### 調查結果

#### 身份證號碼

該些網站解釋，有需要收集身份證號碼以核實補習導師的身份，以避免出現「冒認」的情況，並防止發生影響網站及/或學生和家長的不正當或欺詐行為。但事實上，該些網站並不是受《僱傭條例》監管的職業介紹所，沒有法律責任收集求職者的身份證號碼。它們的商業模式屬低成本運作，所以並不可能面見每一位補習導師以查實身份。在網上收集補習導師的身份證號碼來辨識身份，可以說是毫無作用。

其實，在進行配對過程中，該些網站必需使用補習導師所提供的地址、電郵地址或電話，跟他們聯絡。即使求職者有不當行為如拖欠行政費，中介網站憑這些聯絡資料，已足夠讓警方跟進，或向小額錢債審裁處作出申索。

### Investigation Report: Excessive Online Collection of Private Tutors' Personal Data of Tutorial Service Agency Websites

The Commissioner initiated formal investigations of six tutorial service agency websites (the "Websites") operated by five website operators for the unnecessary collection of Hong Kong Identity Card ("HKID Card") numbers of private tutors and the personal particulars of their contact persons in the Websites' online registration systems. The Websites collected information online from both private tutors seeking private tutor jobs and parents and students looking for private tutors. They provided a matching service and received a commission equivalent to two weeks' tuition fees for successfully matching a tutor and student.

The investigations stemmed from a complaint against one of the six Websites, which collected the Hong Kong Identity Card ("HKID Card") numbers of the private tutors, and details of the tutor's contact person, including the contact person's name, telephone number and relationship with the tutor. During the investigation, the PCPD also randomly reviewed five other tutorial service agency websites to better understand the scope of their collection of personal data from private tutors. The PCPD found that all five websites collected the HKID Card numbers of the private tutors, and four of them also collected the personal details of the tutor's contact person, including the person's name, telephone number and relationship with the tutor.

### Findings of the investigation

#### HKID Card Number

The Websites argued that collection of the HKID Card numbers was necessary to authenticate the identity of the private tutors so as to prevent impersonation or other improper or fraudulent activities which could be committed by the job seekers to the detriment of the Websites and/or the parents and students. In fact, the Website operators are not employment agencies regulated under the Employment Ordinance; if they were, they would have a legal obligation to collect job seekers' HKID Card numbers. However, operating on a low-investment model, they did not interview the private tutors in person for employment checking and identity verification. The online collection of the private tutors' HKID Card numbers for identification was therefore a farce.

The Website operators routinely liaised with the private tutors and parents, and checked information with them by phone, mail, email or SMS. The use of these confirmed communication channels should suffice for reporting to the police any problem in case of need, and for lodging a claim with the Small Claims Tribunal in the event of failure to collect the commission from the job seeker after successful placement.

### 聯絡人資料

該些補習中介網站解釋，需要補習導師的聯絡人姓名與電話號碼，以便發生事故時可作緊急聯絡用途。這做法看來無可厚非，但該些網站應讓個別導師按其所需，自行決定是否提供聯絡人資料，而毋須在導師登記過程中強制收集。

私隱專員總結，該些網站收集補習導師的身份證號碼及其聯絡人的資料屬超乎適度，因而違反了條例保障資料第1(1)原則的規定。

### 執行通知及建議

私隱專員向外該些網站的經營者送達執行通知，指令它們採取步驟，糾正違反事項及防止違反事項再次發生。一名網站經營者向行政上訴委員會提出上訴，反對執行通知，現正等待聆訊；其餘四個網站經營者則依從了執行通知的指令。

### 確立行業做法

個案涉及六個補習中介網站及52萬名人士的個人資料。調查報告可以為補習服務行業在收集客戶的個人資料方面，提供準則。

機構及消費者都必須了解，進行電子商貿活動及使用網上服務平台可能帶來私隱風險，例如資料外洩、資料被不明人士再使用，因而對當事人造成不必要的滋擾及身份盜竊。經營網站的機構須確保它們收集及使用的個人資料真正符合業務所需，而習慣了在網上向服務供應商提供個人資料的消費者，亦應多加警惕，不要因為急於獲取某些服務而白白犧牲自己的個人資料私隱。個案中過度收集的個人資料是身份證號碼。這是獨一無二的身份代號，是終生不能更改的個人資料，應被視為高度私隱及敏感的資料，需要加以保護。

#### 調查報告：

[www.pcpd.org.hk/tc\\_chi/enforcement/commissioners\\_findings/investigation\\_reports/files/R14\\_19675\\_c.pdf](http://www.pcpd.org.hk/tc_chi/enforcement/commissioners_findings/investigation_reports/files/R14_19675_c.pdf)

### Contact person's information

The Website operators also explained that they required the name and telephone number of the private tutor's contact person as a fall-back or emergency contact in the event that the private tutor could not be reached. While these explanations might make sense in some cases for some private tutors, the private tutor must be given the option of whether to provide the name and telephone number of a contact person. It should not be a prerequisite for service enrolment.

The Commissioner concluded that the collection of the private tutors' HKID Card numbers and their contact person's information by the Websites was excessive, thereby contravening DPP1(1) of the Ordinance.

### Enforcement notice and advice

An enforcement notice was served on the operators of the Websites directing them to take steps to remedy the contravention and prevent its recurrence. One website operator lodged an appeal against the enforcement notice with the Administrative Appeals Board; a hearing is pending. The remaining four website operators complied with the enforcement notice.

### Establishing industry practice

The case involved six tutorial service agency websites and the personal data of about 520,000 persons. The investigation report served to set a standard for the tutorial service industry in respect of online collection of personal data from clients.

The report also emphasises that organisations and consumers that engage in e-commerce and other online services must be aware of the associated privacy risks such as data breach and unanticipated secondary use of the data by unknown third parties including unwanted communication and identity theft. Website operators must ensure that they are capturing and using personal data for reasonable business purposes. Web consumers accustomed to submitting personal information to various service providers in order to obtain desired services must be more vigilant about the release of such information. The personal data excessively collected in the case in point is HKID Card number. This is a unique personal identifier which cannot be altered throughout one's life. It should be treated as highly personal and sensitive data, and should be well protected.

#### Investigation Report:

[www.pcpd.org.hk/english/enforcement/commissioners\\_findings/investigation\\_reports/files/R14\\_19675\\_e.pdf](http://www.pcpd.org.hk/english/enforcement/commissioners_findings/investigation_reports/files/R14_19675_e.pdf)