

**PAPER FOR LEGISLATIVE COUNCIL
PANEL ON FINANCIAL AFFAIRS
MEETING ON 9 APRIL 2002**

Sharing of Positive Consumer Credit Data

INTRODUCTION

This paper provides information on the views of the Privacy Commissioner's Office ("the PCO") on the application of the Personal Data (Privacy) Ordinance in relation to a proposal on the sharing of positive consumer credit data.

BACKGROUND

2. The Personal Data (Privacy) Ordinance ("the Ordinance") regulates the collection, retention, security and use of personal data. In the context of consumer credit data sharing, the Privacy Commissioner issued a Code of Practice on Consumer Credit Data ("the Code") in February 1998 pursuant to section 12 of the Ordinance. The Code came into operation in November of the same year. The basic aim of the Code is to provide practical guidance on the handling of consumer credit data by credit providers such as banks and credit reference agencies.

3. Under the Code, a credit reference agency may collect from different credit providers credit data about an individual, put them together in the form of a credit report, and provide the same to a credit provider who has made an enquiry about the individual. Data collected from credit providers include, amongst others, account default data¹, credit application data² and credit card loss data³. In addition to data from credit providers, the credit report may also include information from public sources, e.g. information about writs and bankruptcies and records of enquiry on an individual's credit file i.e. file activity data. However, it is important to note that the collection, handling, retention and transfer of all of the said information by credit providers and credit reference agencies are subject to strict control under the Code.

¹ Account default data being notice that an account for which the individual is holder or guarantor is in default, with details of the credit provider, capacity of the individual, the date when default occurred, type of account and the amount in default and, if it is different, the total amount owing on the account.

² Credit application data being notice that the individual has made an application for consumer credit, including the type and amount of credit sought, and the date of the application.

³ Credit card loss data relate to the financial loss arising from unauthorised transactions through the use of lost cards.

RECENT DEVELOPMENTS

4. Recent adverse developments in consumer lending have given rise to concerns impacting upon the credit industry. There has been an increase both in the number of cases of multiple delinquencies among borrowers and the number of bankruptcy cases. While there are probably many reasons for these developments, financial regulators and the banking industry have interpreted these trends as signaling a need for more vigorous credit assessment methodologies in consumer lending.

5. In view of these developments it has been suggested to the PCO that credit providers should have available to them a greater range of data to facilitate the assessment of credit risk in relation to a particular credit applicant, subject to appropriate safeguards. The proposition put before the PCO was that the restrictions under the Code, in respect of certain data retention and disclosure requirements, be relaxed. It was also proposed that consideration be given to expanding the scope for sharing credit information to include, in particular, positive credit data of a borrower.

6. In response to the call for relaxation on credit data retention and disclosure, the PCO carried out a public consultation exercise in May and July 2001. The rationale adopted was that any proposed relaxation would not go beyond that which was strictly necessary to promote better credit assessment. Feedback to the consultation was generally in favour of the proposed relaxation. Revisions were then made to the Code, which took effect from 1 March 2002, in the following areas.

- a) **Relaxation on data retention and use.** Extension of the permissible retention period of credit application data by a credit reference agency from 90 days to 5 years, and extension of retention period of file activity data from 12 months to 5 years. Use of these historical data for consumer credit scoring is allowed but release of these data by a credit reference agency to credit providers is limited to data compiled over the most recent two years of the 5-year period.
- b) **Additional safeguards.** Restrict access to an individual's credit data by a credit provider only in situations involving the grant, review or renewal of consumer credit. In relation to default data of a discharged bankrupt, a credit reference agency is required to delete such default data from its records within 5 years of the date of the discharge. Furthermore, public records about an individual's bankruptcy, e.g. any declaration or discharge of bankruptcy appearing on official records, should not be retained for more than 8 years from the relevant declaration.

SHARING OF POSITIVE CREDIT DATA

7. It is worth noting that, although the current Code allows sharing of mostly negative credit information, there is limited sharing of positive credit information such as credit application data and credit card loss data. However, as noted by the Hong Kong Monetary Authority (“the HKMA”), banks are not presently reporting any information on credit applications and credit card losses and they are only sharing limited information on account defaults e.g. those that are 120 days past due will be disclosed⁴. Instead, they access the file activity data held by the credit reference agency to get some indication of whether a borrower is seeking credit from multiple sources. It is only recently that banks have been encouraged to make an effort to share credit data that are permitted under the current provisions of the Code.

8. The proposal of sharing positive consumer credit data among credit providers has been suggested as a measure to tackle the problem of rising consumer debt and personal bankruptcy. The argument put forward is that the exchange of positive data among credit providers would enable them to better assess their risk exposure and apply more exacting standards to the issuing of credit cards or other lines of credit. Admittedly, it could be argued that the current provisions of the Code provide a legislative framework for credit data sharing, albeit mostly negative data, the broadening in the scope of sharing positive credit data is just a logical extension of the current framework.

9. From a privacy point of view, it is generally acceptable for negative credit data, e.g. past defaults of an individual who fails to repay a loan, to be collected and shared amongst credit providers for credit reference purposes. Positive credit data, however, refers to information relating to the financial circumstances of individuals that do not involve a failure to pay, e.g. an individual’s overall credit exposure and repayment pattern. Traditionally, these are information that is personal and private to the individual concerned. Unlike other countries where the full sharing of positive credit data has long been accepted as a necessary component of their credit-prone society, the proposal represents a fundamental change in the credit environment of Hong Kong’s consumer lending/borrowing culture. This change may have wider implications than the mere use of additional credit data by banks in credit assessment, and the issues generated by the sharing of positive credit data need to be aired in the public domain.

10. At this point in time, comments received by the PCO from the consumer community indicate a broad range of concerns over the proposal. They are concerned with the potential risk of unauthorized disclosure of their personal information to others for purposes unrelated to credit assessment, such as

⁴ The disclosure of data by banks to the credit reference agency is not mandatory. The willingness or otherwise of banks to share their customers’ data with others, although such sharing is permissible under the Code, may be affected by commercial considerations.

general insurers, real estate agents or even their employers. Others are concerned with the potential loss of protection of their personal information. The majority of credit users who are responsible in managing their personal affairs view the proposal as illogical in that it requires them to release more private information to compensate for the malpractice of a minority of irresponsible credit users. These concerns are understandable.

11. From a data protection viewpoint, the sharing of personal data, particularly when the data are collected for different purposes and from different sources, may adversely affect an individual's privacy interests in the absence of special safeguards. Inevitably, the proposal to expand the scope of data sharing is not going to lessen these concerns. The implications are two-folded.

- a) **Data concentration.** First, the inclusion of a substantial amount of information on credit users would expand the storage and retention of personal information in a single centralized source. Any citizen who has a consumer credit record, no matter whether it is a "good" or "bad" record, may become the subject of a centralized credit reference database. The richness of data on the database may give rise to opportunities of "usage creep" and increase the risks of the data being misused for purposes other than the original purposes of collection.
- b) **Profiling/Stigmatization.** Secondly, there is the issue relating to consumer credit scoring. Credit scoring is a process whereby credit data relating to a borrower are used, either separately or in conjunction with other information, for the purpose of generating a score that purports to be representative of the borrower's credit-worthiness. The process is akin to profiling individuals into categories of "low risk borrowers" or "high risk borrowers". This gives rise to a labeling effect on the individual concerned. Dependent on the scoring mechanism, the types of data used and the accuracy of the data, the process may label the individual with a surprisingly odd "credit label".

FINDING THE RIGHT BALANCE

12. It is true that credit providers in Hong Kong receive less positive credit data than their counterparts in countries such as the UK, US and Canada, and that it is difficult for even the most prudent credit providers to avoid extending credit to already over-extended borrowers. Experience overseas demonstrates that the individual's need for privacy and industry's need to collect and use personal information do not necessarily have to be viewed as mutually exclusive or being at the opposite ends of a scale. Indeed, respect of personal data privacy is an important aspect of the success of any business. The underlying principle dictates that the right balance should be struck between

the effective use of personal information and the individual's right to personal data privacy.

13. Many factors have contributed to the recent developments in personal bankruptcy. Amongst them, prolonged economic adversity is likely to be an overriding factor. The issue is real and some predictions from banking sources have suggested that unless the current situation is effectively addressed the impact could reduce Hong Kong's economic growth by as much as 1.7% by 2003. This is worrying. The issue in question should therefore be looked at from a much broader perspective than that of the prevailing trends in bankruptcy. The essence is the public interest of preserving the stability of Hong Kong's financial markets and the economy as a whole. The challenge is to find the right balance between the public interest and the privacy interest of individuals that would create an environment conducive to sustained market stability and economic growth. Determining that balance would need to be a responsibility shared by consumers (obligations in borrowing), financial institutions (prudence in lending) and relevant regulatory bodies (supervision).

THE PCO'S RESPONSE TO THE ISSUES

14. The PCO is reluctant to advocate or agree with the proposition that the sharing of positive credit data would, by itself, reduce bankruptcy. Any solution that is arrived at to address the issue will inevitably require the exercise of prudence and financial discipline by credit providers in their credit lending practices. The data sharing proposal provides the information platform for use in better risk management. Risk management is the key, not the availability of information for use in the management.

15. At this stage it is not entirely clear whether credit providers have exhaustively explored the full range of options or whether the sharing of positive credit data has been seized upon as the most convenient option. Subject to community's views on the matter, the following aspects are of significance to the PCO in its consideration of the proposal.

- a) **The scope of positive credit data.** Consensus is required to identify a generally accepted and clear definition of the constituent elements of positive data. It would be reasonable to suppose that positive credit data would include the number of credit cards held by an individual, the line of credit on those cards and the individual's repayment pattern. It may also be necessary to determine whether the sharing of positive data should apply to consumers of existing credits or new credits – given the use of historical data may have an immediate effect on an individual's credit score or "credit label".

- b) **The use of the data.** The concepts of giving consumers an informed choice and seeking consumer consent prior to collection of positive credit data demand careful consideration. Explicit notification to consumers on the purpose of use and disclosure of the data would be necessary to comply with the principle of transparency.
- c) **Access to the data.** Restrictions are required to limit access to the credit data only for purposes directly related to credit reference and assessment. An individual should have the right of requesting access to, and correction of, the data held by a credit reference agency.
- d) **Regulatory measures.** Privacy safeguards should be in place such that any future arrangements will comply with the data protection principles of the Ordinance insofar as collection, accuracy, retention, use and security of personal data are concerned. Regulatory controls may be supplemented by requiring a compliance audit on data management practices or a requirement of data registration pursuant to section 14 of the Ordinance⁵. Sanctions against breaches of privacy provisions demand further consideration.

CONCLUSION

16. The PCO has been in dialogue with the HKMA, the Consumer Council and the financial industry on the proposal of sharing positive consumer credit data. At this stage, the PCO has no stated stance on the matter preferring to reserve its position until further details are received from the HKMA regarding the proposal. The PCO will continue to participate in discussions to examine the need to extend the scope of positive data sharing and listen to different views from the community. In the final analysis, a balance will have to be struck between the privacy rights of the individual and the broader public interest. Should there be a strong public interest justification that necessitates revisions to the existing Code, the PCO would proceed with a public consultation on the proposed revisions prior to their implementation.

*Office of the Privacy Commissioner for Personal Data
March 2002*

⁵ Section 14 of the Ordinance empowers the Privacy Commissioner to specify a class of data users who are required to submit a data user return on matters that are prescribed in Schedule 3 of the Ordinance. Amongst the prescribed information, Schedule 3 specifies information relating to the kinds of personal data and the purpose or purposes for which the personal data are to be collected, held, processed or used by the data user.