

**PAPER FOR THE LEGISLATIVE COUNCIL
PANEL ON FINANCIAL AFFAIRS
MEETING ON 24 SEPTEMBER 2002**

**Consultation Document
On the Proposed Provisions on Consumer Credit Data Protection :
The Sharing of Positive Credit Data**

INTRODUCTION

This paper provides information on the consultation document issued by the Privacy Commissioner's Office ("the PCO") on proposed provisions on consumer credit data protection in relation to the sharing of positive credit data.

BACKGROUND

2. At present, the sharing of consumer credit data through credit reference agencies is governed by the Code of Practice on Consumer Credit Data ("the Code") issued by the Privacy Commissioner pursuant to section 12 of the Personal Data (Privacy) Ordinance. The Code was first issued in February 1998 and took effect on 27 November of that year. Some revisions regarding data retention and disclosure were introduced in February 2002 and took effect on 1 March 2002 following a public consultation exercise conducted in May 2001. 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. The development of the consultation document was a considered response to the financial industry's proposal on the sharing of consumer positive credit data among credit providers. It has been suggested by the industry that the greater sharing of positive credit data would contribute towards alleviating the problems of growing consumer indebtedness and personal bankruptcy.

CONSIDERATIONS FOR PUBLIC CONSULTATION

4. The industry's proposal, if implemented, amounts to a relaxation of the provisions of the current Code to allow for a greater sharing of positive credit data via the credit reference agency. The Privacy Commissioner acknowledges that there are privacy-related issues arising from the proposal that are of concern to consumers. In deciding to proceed with the consultation, the Privacy Commissioner has taken into account various views expressed by the

industry and consumers. In particular, the Privacy Commissioner has considered three factors that are central to a solution that strikes a balance between the public interest and the data privacy interest of consumers, namely:

- (a) ***The broader public interest.*** The issues in question need to be placed in a broader context than that of the prevailing trends in bankruptcy and consumer debt. In essence the public interest is best served if the proposed measures are instrumental in developing a healthy lending environment that preserves the stability of Hong Kong's financial markets and the economy more generally.
- (b) ***The relevance of new credit data to be used in credit assessment.*** The collection of new credit data to be shared among credit providers should not be excessive in relation to the purpose of credit assessment. The fundamental principle applied to any situation in which personal data is collected can be simply stated: the collection of personal data should be kept to the minimum necessary for the purpose(s) for which they are to be used. In the present context, the relevance of the data needs to be assessed in terms of its value and contribution to the public interest.
- (c) ***The individual's rights to data privacy.*** The consumer, being the subject of the credit data concerned, should have control over the way in which such data are to be shared with others. Informed choice should be made available to the consumer when applying for new credit. Consent to the use of his credit data, and the continued use of such data for future credit reference, is wholly desirable. This consent-based approach upholds the individual's rights to control his/her own data. This choice should also be extended to the consumer when the lending relationship is terminated upon full settlement of the credit account.

5. Having considered these factors, the Privacy Commissioner sets out in the consultation document the key issues arising from the industry's proposals, their ramifications and a set of draft provisions to address the issues that impact upon personal data privacy. A summary of the draft provisions is annexed to this paper for easy reference by Members.

PUBLICITY ABOUT THE CONSULTATION EXERCISE

6. On 28 August 2002, the PCO released the consultation document to seek the public's views on the draft proposals. The consultation exercise is scheduled to run until 25 October 2002. Over 3,000 copies of the consultation document have been dispatched to various interested parties. These include Members of the Legislative Council, District Council, professional and representative bodies. The consultation document is also accessible from the PCO's web-site at www.pco.org.hk. To assist members of the general public,

copies of the document are available for collection at the 19 District Offices and the PCO. In addition, two 30-second radio APIs in Cantonese and English are also produced for broadcasting on local radio stations during the consultation period in order to raise public awareness of the matter.

7. In the week following the launch of the consultation document, the Privacy Commissioner attended 11 media interviews and radio phone-in programmes to explain the various issues associated with the draft proposals. These included 7 live-broadcast programmes on local radio and television stations such as RTHK's "Hong Kong Today", Commercial Radio's "Saturday Forum on Economic and Public Affairs", ATV's "Newslines" and Cable TV's "Finance News". In the live broadcast of RTHK's "Party Line", the Privacy Commissioner was joined by members of the Democratic Alliance for Betterment of Hong Kong (DAB), the Democratic Party (DP), the Chief Executive of the Consumer Council, the Vice-chairman of the HKSAR Licensed Money Lenders Association and an academic from Chinese University Department of Decision Science and Managerial Economics.

INITIAL REACTIONS TO THE DRAFT PROPOSALS

8. The PCO has been registering the public's views reported by the news media. The consultation received wide coverage by the press on the day following the launch and many papers played up the proposal of a 24-month transition period during which new positive data would be allowed for use in the handling of new credit applications only. A few papers noted the Commissioner's remarks that the proposal for greater sharing of credit data would not be a cure for the bankruptcy problem. However, it would give lenders a better financial picture of borrowers thereby enabling more vigorous credit assessment.

9. According to reports in the press, public reactions to the draft proposals are varied. The financial industry and most leading banks in Hong Kong welcomed the draft proposals. Those who expressed support commented that the proposal struck a proper balance between the bank's legitimate right of access to information for credit assessment and customers' concern about loss of privacy. The Chief Executive of the HKMA was quoted as saying that, "The proposed measures could help ease the bad debt problem facing the banking sector, which may result in the lowering of the cost of borrowing"¹. The DAB also supported the proposal and it was quoted as saying that, "The proposal of a positive credit database may help to reduce the delinquency ratio and it has no worries that the shared data would be used for poaching customers"².

¹ Ming Pao, 29 August 2002.

² Sing Tao Daily, 29 August 2002.

10. On the other hand, it was reported that the DP opposed the sharing of positive credit data because it thought that, “Existing privacy safeguards were inadequate and the Code of Practice protecting consumer rights lacked teeth”³. The Consumer Council issued a press release in which it stated that, “Quantifiable benchmarks to measure the benefits to the public should be clearly established if the proposal on sharing of positive credit data is to go ahead”⁴. The press release went on to say, “Once these benchmarks are set, their achievement must be measured by an independent body over a period of time. Failure to achieve these benchmarks will require a serious rethink or possible reversion back to the current position”.

11. The PCO has also received written submissions from members of the general public. So far, there have been 14 submissions. The majority of them are opposed to the proposal on the principle that, “The sharing of positive data is intrusive to a person's privacy” and “The proposal gives banks a licence to peep into their personal lives and finances”. Although these submissions lack a substantive response to the issues raised in the consultation document, they do indicate to the PCO the main worries the public have towards the proposal.

CONCLUSION

12. The PCO will continue to register the public's responses to the draft proposals contained in the consultation document. It is anticipated that the consultation exercise will generate a healthy debate of the issues among a broad cross section of Hong Kong society, and that the quality of submissions will ultimately benefit the final analysis of those issues.

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

³ South China Morning Post, 29 August 2002.

⁴ Press Release by the Consumer Council, 28 August 2002.

**A Summary of the Draft proposals on
Consumer Credit Data Protection
In relation to the sharing of positive credit data**

Scope of new credit data

1. That a credit reference agency *may collect* from credit providers limited information on an individual's credit facilities *excluding* any residential mortgage loans. A residential mortgage loan means a loan to an individual or to individuals to finance the purchase of, or to refinance the earlier purchase of, any residential properties, including uncompleted units and properties under the Home Ownership Scheme, Private Sector Participation Scheme and Tenants Purchase Scheme.
2. That a credit reference agency *should not collect* from credit providers any information about an individual's personal income, deposits, other assets or non-credit based information such as the individual's employment information.
3. That the information on an individual's credit facility *reportable by* a credit provider to a credit reference agency may include the following data:
 - (a) general credit data such as (i) the identity of the credit provider, (ii) the account opening date, (iii) the type of facility and the currency in which it is denominated, (iv) in the case of the facility being a credit card, the approved credit limit, or in other cases (where applicable), the original credit amount or approved credit limit and the repayment term;
 - (b) repayment data:
 - in the case of the facility being a credit card, data such as (i) the remaining available credit, (ii) the date of last statement and amount shown on such statement and (iii) the date and amount of payment(s) made during last reporting period;
 - in the case of other credit facilities (where applicable), data such as (i) the remaining available credit (ii) the outstanding balance of the account, (iii) the date on which repayment last fell due and the amount then due, and (iv) the date and amount of payment(s) made during the last reporting period;
 - (c) account termination data (where applicable) such as (i) the date of account termination and (ii) the fact that the account had been terminated by full repayment.

Restrictions on data sharing

4. Upon a date to be specified by the Privacy Commissioner ("the effective date"), a credit reference agency *may collect* from a credit provider information about an individual's credit facilities where there is a current borrowing relationship.

5. A credit reference agency *should not collect* from credit providers any information relating to an individual's credit facility repayment details that occurred prior to the effective date.
6. A credit report about an individual that is provided to a credit provider for credit assessment purposes *may display* information on the individual's credit facilities data reportable by credit providers and other calculated data derived from these data. Display of repayment history records relating to the credit facilities should be limited to the most recent 24 months.
7. A credit report *should not disclose* the names of the lender (i.e. the source of the credit) of an individual's credit facilities except where that lender is the credit provider requesting the report.
8. Credit data relating to an individual's credit facility that are to be used for credit scoring on the individual by the credit reference agency should be *limited* to data compiled within a period of 5 years immediately preceding the date of the credit scoring.
9. Repayment history records relating to an individual's credit facility that are accessible by credit providers should be *limited* to data compiled within a period of 24 months immediately preceding the date of the access.

Privacy safeguards – Credit provider

Access to credit database

10. A credit provider *may access* from a credit reference agency credit data about an individual's credit facility (in addition to the negative data as currently permitted) in the course of considering any grant, review or renewal of consumer credit to the individual or to another person for whom the individual proposes to act as a guarantor; or upon default by the individual as principal or as guarantor.
11. A credit provider is *required to update* credit data about an individual's credit facility previously disclosed to a credit reference agency at the end of each reporting period not exceeding 31 days to ensure that the individual is not prejudiced by information that may be out-dated.
12. On each occasion of accessing the credit reference database of a credit reference agency, a credit provider *should specify* to the agency the event necessitating such access in accordance with the permissible purposes mentioned above.

Notification to consumers

13. Upon application for a new credit facility, a credit provider should make provision to inform the borrower that, upon full repayment of the account, the borrower may elect to "opt-out" of the use of the account information by a credit reference agency for future credit reporting and scoring purposes.
14. As a matter of good practice, a credit provider should consider giving to the borrower, as soon as reasonably practicable upon the termination of his account by full repayment, a reminder regarding his choice to "opt-out" of the use of the account information for future credit reporting and scoring.

15. Subsequently, a credit provider, who is intent upon accessing credit data held by a credit reference agency in respect of a borrower's account which the borrower has previously elected to "opt-out", should seek from the borrower his written consent for it to access such data.
16. Upon receipt of an "opt-out" request relating to a closed account, and subject to verification of the individual's identity/authority and further that the said account contains no default data held on file (e.g. no default payments in excess of 90 days past due), the credit reference agency should:
 - (a) cease using the account information in any future credit reports and for credit scoring concerning the individual; and
 - (b) cease making available the account information to other credit providers;

unless such credit provider has confirmed that it has obtained the individual's written consent to access the information, in which case, the credit reference agency may use that account information for providing a credit report or credit score on the individual.

Privacy safeguards – Credit reference agency

Preventing abusive access

17. A credit reference agency should implement an access log record system of all instances of access to its credit database by credit providers. These log records should be kept for not less than 2 years for examination by its compliance auditor and/or the Privacy Commissioner.
18. A credit reference agency should promptly report to the senior management of a credit provider and to the Privacy Commissioner incidents involving any suspected abnormal access to its credit database by staff of the credit provider. The credit provider should then undertake a prompt investigation of the incident.

Ensuring compliance

19. As a matter of good practice, a credit reference agency is recommended, at its own expense, to commission an independent compliance audit annually to verify whether its data management practices are adequate in terms of enabling the agency to comply with the requirements of this Code. Such an audit should be carried out with a view to having the compliance auditor submitting to the Privacy Commissioner an audit report no later than 3 months from the date of the commencement of the compliance audit.

Other regulatory control measures

20. A credit reference agency should make its credit reference system available for inspection by the Privacy Commissioner pursuant to his power under section 36 of the Personal Data (Privacy) Ordinance.
21. A credit provider, in deciding on the engagement or renewal of any relationship with a credit reference agency for the provision of consumer credit reference services, should treat as an important criterion the demonstration by the agency of its compliance with the requirements of the Ordinance and of this Code.

Implementation safeguards

22. That there should be a twenty-four month transition period following the effective date for the sharing of positive credit data. During that period, credit providers may report positive credit data of existing borrowers to the credit reference agency, but are prevented from accessing and using these data for the purposes of assessing the renewal or review of existing credit facilities of borrowers until after the transition period has elapsed.
23. The above-mentioned restriction should not apply to new applications for credit made by a borrower to the credit provider during the said transition period.