

2. 釋義

(1) 在本條例中，除文意另有所指外——
“保障資料原則”(data protection principle)指在附表 1 列明的任何保障資料原則；

4. 保障資料原則

資料使用者不得作出違反任何保障資料原則的作為或從事違反任何該等原則的行為，但如該作為或行為(視屬何情況而定)是根據本條例規定須作出或進行或准許作出或進行的，則屬例外。

附表 1 [第 2(1) 及 (6) 條]
保障資料原則

1. 第 1 原則——收集個人資料的目的及方式

- (1) 除非——
 - (a) 個人資料是為了直接與將會使用該等資料的資料使用者的職能或活動有關的合法目的而收集；
 - (b) 在符合 (c) 段的規定下，資料的收集對該目的是必需的或直接或間接與該目的有關的；及
 - (c) 就該目的而言，資料屬足夠但不超乎適度，否則不得收集資料。
 - (2) 個人資料須以——
 - (a) 合法；及
 - (b) 在有關個案的所有情況下屬公平。
 - (3) 凡從或將會從某人收集個人資料，而該人是資料當事人，須採取所有切實可行的步驟，以確保——
 - (a) 他在收集該等資料之時或之前，以明確或暗喻方式而獲告知——
 - (i) 他有責任提供該等資料抑或是可自願提供該等資料；及
 - (ii) (如他有責任提供該等資料) 他若不提供該等資料便會承受的後果；及
 - (b) 他——
 - (i) 在該等資料被收集之時或之前，獲明確告知——
 - (A) 該等資料將會用於甚麼目的(須一般地或具體地說明該等目的)；及
 - (B) 該等資料可能轉移予甚麼類別的人；及
 - (ii) 在該等資料首次用於它們被收集的目的之時或之前，獲明確告知——
 - (A) 他要求查閱該等資料及更改或更正該等資料的權利；
 - (B) 該等資料可向其提出的個人的姓名及地址。
- 但在以下情況屬例外：該等資料是為了在本條例第 VIII 部中指明為個人資料就其而獲豁免而不受第 6 保障資料原則的條文所管限的目的而收集，而遵守本款條文相當可能會損害該目的。

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—
“data protection principle” (保障資料原則) means any of the data protection principles set out in Schedule 1;

4. Data protection principles

A data user shall not do an act, or engage in a practice, that contravenes a data protection principle unless the act or practice, as the case may be, is required or permitted under this Ordinance.

SCHEDULE 1 [s. 2(1) & (6)]
DATA PROTECTION PRINCIPLES

1. Principle 1—purpose and manner of collection of personal data

- (1) Personal data shall not be collected unless—
 - (a) the data are collected for a lawful purpose directly related to a function or activity of the data user who is to use the data;
 - (b) subject to paragraph (c), the collection of the data is necessary for or directly related to that purpose; and
 - (c) the data are adequate but not excessive in relation to that purpose.
 - (2) Personal data shall be collected by means which are—
 - (a) lawful; and
 - (b) fair in the circumstances of the case.
 - (3) Where the person from whom personal data are or are to be collected is the data subject, all practicable steps shall be taken to ensure that—
 - (a) he is explicitly or implicitly informed, on or before collecting the data, of—
 - (i) whether it is obligatory or voluntary for him to supply the data; and
 - (ii) where it is obligatory for him to supply the data, the consequences for him if he fails to supply the data; and
 - (b) he is explicitly informed—
 - (i) on or before collecting the data, of—
 - (A) the purpose (in general or specific terms) for which the data are to be used; and
 - (B) the classes of persons to whom the data may be transferred; and
 - (ii) on or before first use of the data for the purpose for which they were collected, of—
 - (A) his rights to request access to and to request the correction of the data; and
 - (B) the name and address of the individual to whom any such request may be made.
- unless to comply with the provisions of this subsection would be likely to prejudice the purpose for which the data were collected and that purpose is specified in Part VIII of this Ordinance as a purpose in relation to which personal data are exempt from the provisions of data protection principle 6.

2. 第 2 原則——個人資料的準確性及保留期間

- (1) 須採取所有切實可行的步驟，以——
- 確保在嚴及有關的個人資料被使用於或會被使用於的目的(包括任何直接有關的目的)下，該等個人資料是準確的；
 - 若存在合理理由相信有關的個人資料被使用於或會被使用於的目的(包括任何直接有關的目的)下，該等個人資料是不準確時，確保——
 - 除非該等理由不再適用於該等資料(不論是藉更正該等資料或其他方式)及在此之前，該等資料不得使用於該目的；或
 - 該等資料被刪除。
 - 在於有關個案的相關情況下知悉以下事項屬切實可行時——
 - 在指定日期或之後向第三者披露的個人資料，在嚴及該等資料被使用於或會被使用於的目的(包括任何直接有關的目的)下，在事項上是不準確的；及
 - 該等資料在如此披露時是不準確的，確保第三者——
 - 獲告知該等資料是不準確的；及
 - 獲提供所需詳情，以令他能在該目的下更正該等資料。
- (2) 個人資料的保存時間，不得超過將其保存以貫徹該等資料被使用於或會被使用於的目的(包括任何直接有關的目的)所需的時間。

3. 第 3 原則——個人資料的使用

如無有關的資料當事人的訂明同意，個人資料不得用於下列目的以外的目的——

- 在收集該等資料時會將其使用於的目的；或
- 直接與(a)段所提及的目的有關的目的。

4. 第 4 原則——個人資料的保安

須採取所有切實可行的步驟，以確保由資料使用者持有的個人資料(包括採用不能切實可行地予以查閱或處理形式的資料)受保障而不受未經獲准許的或意外的查閱、處理、刪除或其他使用所影響，尤其須考慮——

- 該等資料的種類及如該等事情發生便能造成的損害；
- 儲存該等資料的類型；
- 儲存該等資料的設備所包含(不論是藉自動化方法或其他方法)的保安措施；
- 為確保能查閱該等資料的人的良好操守、審慎態度及辦事能力而採取的措施；及
- 為確保在保安良好的情況下傳送該等資料而採取的措施。

5. 第 5 原則——資訊須在一般情況下可獲得

須採取所有切實可行的步驟，以確保任何人——

- 能確定資料使用者在個人資料方面的政策及實務；
- 能確定資料使用者所持有的個人資料的種類；
- 能確定如資料使用者持有的個人資料是為或將會為甚麼主要目的而使用的。

2. Principle 2—accuracy and duration of retention of personal data

- (1) All practicable steps shall be taken to ensure that—
- personal data are accurate having regard to the purpose (including any directly related purpose) for which the personal data are or are to be used;
 - where there are reasonable grounds for believing that personal data are inaccurate having regard to the purpose (including any directly related purpose) for which the data are or are to be used—
 - the data are not used for that purpose unless and until those grounds cease to be applicable to the data, whether by the rectification of the data or otherwise; or
 - the data are erased;
 - where it is practicable in all the circumstances of the case to know that—
 - personal data disclosed on or after the appointed day to a third party are materially inaccurate having regard to the purpose (including any directly related purpose) for which the data are or are to be used by the third party, and that data were inaccurate at the time of such disclosure, that the third party—
 - is informed that the data are inaccurate; and
 - is provided with such particulars as will enable the third party to rectify the data having regard to that purpose;
- (2) Personal data shall not be kept longer than is necessary for the fulfilment of the purpose (including any directly related purpose) for which the data are or are to be used.

3. Principle 3—use of personal data

Personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than—

- the purpose for which the data were to be used at the time of the collection of the data; or
- a purpose directly related to the purpose referred to in paragraph (a).

4. Principle 4—security of personal data

All practicable steps shall be taken to ensure that personal data (including data in a form in which access to or processing of the data is not practicable) held by a data user are protected against unauthorized or accidental access, processing, erasure or other use having particular regard to—

- the kind of data and the harm that could result if any of those things should occur;
- the physical location where the data are stored;
- any security measures incorporated (whether by automated means or otherwise) into any equipment in which the data are stored;
- any measures taken for ensuring the integrity, prudence and competence of persons having access to the data; and
- any measures taken for ensuring the secure transmission of the data.

5. Principle 5—information to be generally available

All practicable steps shall be taken to ensure that a person can—

- ascertain a data user's policies and practices in relation to personal data;
- be informed of the kind of personal data held by a data user;
- be informed of the main purposes for which personal data held by a data user are or are to be used.

6. 第 6 原則——查閱個人資料

資料當事人查閱——

- (a) 確定資料使用者是否持有他屬其資料當事人的個人資料；
- (b) 要求——
 - (i) 在合理時間內查閱；
 - (ii) 在支付並非超乎應得的費用(如有的話)下查閱；
 - (iii) 以合理方式查閱，及
 - (iv) 查閱採用清楚易明的形式的個人資料；
- (c) 在 (b) 段所提述的要求被拒絕時獲提供理由；
- (d) 反對 (c) 段所提述的拒絕；
- (e) 要求改正個人資料；
- (f) 在 (e) 段所提述的要求被拒絕時獲提供理由；及
- (g) 反對 (f) 段所提述的拒絕。

6. Principle 6—access to personal data

A data subject shall be entitled to—

- (a) ascertain whether a data user holds personal data of which he is the data subject;
- (b) request access to personal data—
 - (i) within a reasonable time;
 - (ii) at a fee, if any, that is not excessive;
 - (iii) in a reasonable manner; and
 - (iv) in a form that is intelligible;
- (c) be given reasons if a request referred to in paragraph (b) is refused;
- (d) object to a refusal referred to in paragraph (c);
- (e) request the correction of personal data;
- (f) be given reasons if a request referred to in paragraph (e) is refused; and
- (g) object to a refusal referred to in paragraph (f).