

Legislative Council Panel on Constitutional Affairs

**Report on the Work
of the Office of the Privacy Commissioner for Personal Data in 2016**

Members were briefed at the meeting of the Legislative Council Panel on Constitutional Affairs on 20 March 2017 by the Privacy Commissioner for Personal Data (“**the Commissioner**”) on the activities of his office (“**PCPD**”) in 2016. This paper serves to update Members of PCPD’s work in 2016.

Enquiries

2. In 2016, the PCPD received a total of 16,180 enquiries, which represented a drop of 12% as compared with 18,456 enquiries in 2015. The enquiries were mainly concerned with collection / use of Hong Kong Identity Card numbers or copies (28%), employment (11%), and use of personal data in direct marketing (7%).

3. Internet-related enquiries have increased from 2.9% (726 cases) in 2015 to 3.7% (885 cases) in 2016. They were mainly concerned with cyber-profiling, mobile apps and cyber-bullying.

4. The number of enquiries dropped last year because of the following reasons: (i) PCPD’s endeavour to promote the culture of “Protect, Respect Personal Data” through promotion and education activities to raise the awareness of personal data privacy protection of organisational data users and the public; (ii) keeping abreast of the latest privacy related issues and releasing media statements and response to address public concerns in a timely manner, so that the public can have an early understanding of the issues and whether the Personal Data (Privacy) Ordinance (“the Ordinance”) is applicable without making enquiries with the PCPD; and (iii) the updated and enhanced PCPD website enabling information related to personal data privacy protection easily accessible to the public.

Complaints

5. In 2016, the PCPD received 1,838 complaints, which represented a drop of 7% as compared with 1,971 complaints in 2015.

6. Of the complaints received, 73% were made against the private sector (1,335 cases), 9% against the public sector / government departments (171 cases) and 18% against individuals (332 cases).

7. Among the private sector organisations, the financial industry received the most complaints (389 cases), followed by property management (264 cases) and telecommunications (71 cases).

8. Regarding the nature of the complaints, 45% related to the use of personal data without the consent of data subjects (819 cases), 37% to the purpose and manner of data collection (677 cases), 10% to data security (188 cases) and 7% to data access/correction requests (129 cases).

9. Similarly, the decrease in the number of complaints last year is associated with the ever-increasing public awareness of personal data privacy protection through the PCPD's implementation of a series of meaningful, result-oriented and consistent promotion and education programmes. Moreover, the PCPD took the initiative to assist organisational data users of different industries in complying with the Ordinance through compliance checks and helping them understand the requirements under the Ordinance, which resulted in the decrease in the number of complaints. The number of complaints against organisations participating in the Privacy Management Programme also dropped. Furthermore, the PCPD has revised the complaint procedure and form of providing information, which clearly state the rights and obligations of a complainant and the necessary information/evidence to be provided so as to manage the complainant's expectation in an early stage. Hence, the numbers of complaints unrelated to personal data privacy, frivolous complaints and unsubstantiated complaints significantly dropped last year.

Complaints Related to Direct Marketing (“DM”)

10. DM-related complaints outnumbered complaints of other substance. In 2016, the PCPD received 393 DM-related complaints, which represented an increase of 22% as compared with 322 cases in 2015. Common issues in this category included the use of personal data for DM without obtaining the data subject's consent or failing to observe his opt-out request. By the end of 2016, 376 of these cases have been processed and closed while 17 are being considered.

Complaints Related to Property Management

11. In 2016, the PCPD received 264 complaints relating to property management, which represented an increase of 69% as compared with 156 cases in 2015. Common issues in this category included the use of property owners' personal data to pursue outstanding management fees, installation of CCTV and collection of visitors' Hong Kong Identity Card number upon entering into the premises.

Complaints Related to Use of Information and Communications Technology ("ICT")

12. In 2016, the PCPD received 229 ICT-related privacy complaints, which represented a drop of 5%, as compared with 241 cases in 2015.

13. Common issues in this category included the use of mobile apps and social networking websites, the disclosure or leakage of personal data on the Internet, and cyber-bullying, a breakdown of which over the last five years is at **Annex A**.

Complaints Related to Electioneering

14. In 2016, a total of 73 electioneering-related complaints were received, the majority (51 cases) of which related to the 2016 Legislative Council General Election. Most of the complainants objected to their personal data having been used in electioneering activities without their consent.

15. In July 2016, the PCPD issued an infographics on the *Electioneering Activities Guidance* that included previous complaint cases to facilitate better understanding of the compliance with the requirements under the Personal Data (Privacy) Ordinance ("**the Ordinance**").

Enhancement of Operational Efficiency

16. Annex B summaries the key performance indicators of the PCPD in handling complaints in the past five years. In brief,

- (a) the total number of complaint cases closed has increased from 1,268 in 2012 to 1,967 in 2016;

- (b) the percentage of complaint cases closed within 180 days has increased from 88% in 2012 to 96% in 2016; and
- (c) the average time taken to conclude simple and complicated cases has shortened from 39 days and 219 days respectively in 2012 to 23 days and 78 days respectively in 2016.

Compliance Checks and Self-initiated Investigations

17. In 2016, 89 data breach incidents were reported to the PCPD, which represented a drop of 9% as compared with 98 incidents in 2015. As no single incident in 2016 affected more than 100,000 individuals, the number of affected individuals dropped significantly from 871,000 in 2015 to 104,000 in 2016. These incidents involved the loss of documents or portable devices, inadvertent disclosure of personal data by fax, email or post, hacking, and system misconfiguration, etc.

18. The PCPD completed 290 compliance checks and 13 self-initiated compliance investigations¹ in 2016, as compared with 284 checks and 76 self-initiated compliance investigations in 2015 (59 out of the 76 self-initiated compliance investigations in 2015 were in connection with the investigation of “blind” recruitment advertisements²).

Inspection

19. In 2016, the PCPD conducted an inspection³ of an estate agency in view of the vast amount of clients’ personal data it collected and retained. The purpose of the inspection was to assist the Commissioner in making recommendations to the estate agency industry with a view to promoting compliance with the provisions of the Ordinance.

¹ When the Commissioner has reasonable grounds to believe that there may have been contravention of a requirement under the Ordinance, which involves personal data other than that of the complainant, he may conduct a compliance check against the data user's practice concerned and/or commence an investigation into the matter on his own initiative under section 38(b) of the Ordinance.

² Organisations or individuals place recruitment advertisements to solicit personal data of job applicants without revealing the employers’ identities.

³ Pursuant to section 36 of the Ordinance, the Commissioner may carry out an inspection of any personal data system used by a data user for the purpose of making recommendations relating to the promotion of the compliance with the provisions of the Ordinance.

Enforcement Action and Prosecution

20. In 2016, the PCPD issued 36 warnings and 6 enforcement notices to organisations as compared with 17 warnings and 67 enforcement notices in 2015 (57 out of the 67 enforcement notices served in 2015 were in connection with the investigation of “blind” recruitment advertisements).

21. During the same period, 112 cases were referred to Police for criminal investigation and prosecution (30 in 2015), of which, 109 cases related to contraventions involving the use of personal data in DM (28 in 2015). By the end of 2016 the Police had concluded three out of the aforesaid 109 DM-related cases due to various reasons⁴, the remaining 106 DM-related cases are still under criminal investigation.

22. The total number of prosecution cases in 2016 was 5 (6 in 2015), all of which were cases referred by the PCPD to the Police between 2013 and 2015. Among those five prosecution cases, three convictions concerned the use of personal data in DM. The offences related to (i) using personal data of a customer in DM without taking specified actions and obtaining his consent, (ii) failing to inform the customer, when using his personal data in DM for the first time, of his right to request not to use his personal data in DM without charge, and (iii) failing to comply with the requirement from a customer to cease to use his personal data in DM.

23. In one of the above-mentioned conviction cases, a Community Service Order of 80 hours was imposed by the court on the defendant in respect of each charge, to be served concurrently. This is the first time where the court imposed a Community Service Order on a defendant convicted under the new DM provisions, which shows that the court has taken a serious view in the contraventions of DM provisions.

Response to Consultations

24. In 2016, the PCPD provided comments on 12 proposed legislations and administrative measures, as well as responded to two public consultations that had an impact on personal data privacy. Details are set out in **Annex C**.

⁴ They include (i) withdrawal of the case by the complainant, (ii) the direct marketing call in question was not made in Hong Kong, and (iii) the identity of the calling company was untraceable.

Electronic Health Record Sharing System (“eHRSS”) Bill

25. After the eHRSS Ordinance came into operation on 2 December 2015, the PCPD had worked closely with the eHR Office under the Food and Health Bureau to set up a two-way referral mechanism in handling possible eHR-related complaints. Representatives from the eHR Office and Hospital Authority were invited to conduct briefing sessions for staff of the PCPD while the PCPD was invited to share its experience with the eHR Office in handling complaints relating to the medical sector. Two sets of information leaflets on protection of personal data privacy in relation to the sharing system were published in early 2016 for the reference of the healthcare recipients and the healthcare providers respectively. After the launch of the eHRSS in March 2016, the PCPD continued to render comments on personal data privacy-related issues in relation to the sharing system to the government, and will conduct training sessions for the Hospital Authority and other healthcare providers.

Regulating Cross-border Flows of Personal Data

26. Section 33 of the Ordinance provides a stringent regulatory framework for the transfer of data outside Hong Kong. However, section 33 has yet to be brought into force since its enactment in 1995.

27. To prepare for the commencement of operation of section 33, the PCPD commissioned a consultancy study on drawing up a ‘white list’ of jurisdictions with privacy protection standards comparable to that of Hong Kong, delivered the consultancy report to the Government and issued a Guidance Note on Personal Data Protection in Cross-border Data Transfer in 2014. Subsequently, the Government has engaged a consultant to conduct a business impact assessment for the implementation of section 33 of the Ordinance. The consultant was commissioned to grasp the effects of implementation on businesses. During the year, the PCPD has rendered comments to the consultant concerning the interpretation, application and compliance issues of the relevant legal requirements under the Ordinance.

Progress of Work Relating to the “45-day statutory time limit”

28. Under section 39(3) of the Ordinance, if the Commissioner decides not to carry out an investigation initiated by a complaint, he has to notify in writing the complainant within 45 days after receiving the complaint. However, as pointed out by the PCPD in the previous work reports, it was not always possible to reach such a decision and notify the complainant within 45 days.

29. To tackle the issue, the PCPD sought to enhance operational efficiency by streamlining of work procedures and redeployment of staff etc. In 2015, the Operations Division of the PCPD was restructured, the workflow revamped and the complaint form redesigned with a view to complying, with no exception, with the 45-day statutory requirement.

30. Since April 2016, the compliance rate of the 45-day requirement has attained 100% and the non-compliance of this statutory requirement became a problem of the past. It is the policy of the PCPD that the statutory requirement must be complied with without exception. Details of the compliance rate of the recent years are set out in Annex B.

Legal Assistance Scheme

31. The Legal Assistance Scheme commenced on 1 April 2013. Under the scheme, the PCPD may provide assistance to a person who has suffered damage by reason of a contravention of a requirement under the Ordinance by a data user and intends to institute proceedings to seek compensation from the relevant data user. In 2016, the PCPD completed nine applications for legal assistance. Of these applications, four were rejected, one was withdrawn by the applicants and four are being considered. The figure shows a gradual increase of services provided to the aggrieved individuals in appropriate cases.

Privacy Management Programme (“PMP”)

32. The Commissioner has recognised that privacy and data protection in this era of Big Data and rising public expectation cannot be managed effectively if they are merely treated as a legal compliance issue. It has advocated that organisations should embrace personal data privacy protection as part of their corporate governance responsibilities and apply it as a top-down business imperative throughout the organisation. This entails the adoption of holistic and encompassing privacy management programmes that ensure robust privacy policies and procedures are in place and implemented for all business practices, operational processes, product and service design, physical architectures and networked infrastructure.

33. In 2014, the Government, together with 25 companies from the insurance sector, nine companies from the telecommunications sector and five organisations from other sectors, all pledged to implement privacy management programmes. The Hong Kong Association of Banks also indicated that the banking industry supports the initiative. In order to further assist organisations to implement PMP in a systematic way, the Government and the PCPD in 2016 collaborated in engaging an external consultant to assist government departments to develop, review, implement and/or refine their PMP.

Promotion and Public Education

34. In 2016, a total of 18 major promotional and education programmes were organised to cater for the various needs of individuals (including students) and organisations, reaching over 190,000 participants. Promotion of youth privacy has always been one of the PCPD's priorities. The University Privacy Campaign was held, attracting participation of over 43,000 staff and students from the 10 local universities. Further, the "Student Ambassador for Privacy Protection Programme" was revamped last year by adopting a brand new scheme called the "School Partners Recognition Scheme" to encourage participation. Under the Scheme, the achievements of secondary schools that demonstrated good practice in promoting personal data privacy protection on campuses were commended and publicly recognised. A record-high of 125 schools joined the 2016 Programme and became our school partners. **Annex D** shows the PCPD's efforts in promotion and public education in the past five years.

35. In 2016, the PCPD conducted 255 professional workshops, seminars and workshops, with a total of about 25,800 participants (which represented an increase of 38% as compared with 2015) coming from over 420 organisations. In 2016, the PCPD also published and revised 21 publications, including codes of practice / guidelines, information leaflets and infographics, aiming to assist various organisations and industries to understand and comply with the Ordinance and to implement the best practices.

36. In view of the evolving ICT and the challenges it has brought to personal data privacy protection, the PCPD held the "Mobile App Development Forum on Privacy and Security" in April 2016 to explore how to develop mobile apps with data protection in mind and manage security risks. In addition, the Privacy Commissioner and his senior officers were invited to speak and share views on how to strike the right balance between personal data protection and the free flow of information at more than 20 presentations, seminars and talks throughout the year.

Data Protection Officers' Club ("DPOC")

37. In 2016, the DPOC had 588 members, which represented an increase of 9.9% as compared with 2015. Three seminars were held for DPOC members, including briefing on the convicted DM cases, sharing of recent Administrative Appeals Board cases and introducing the Personal Data (Privacy) Ordinance to new members.

Other Promotional Activities

38. To enhance a culture of "Protect and Respect Personal Data", the PCPD produced a series of educational videos in March 2016, featuring a fictional character "Privacy Detective" who explained the importance of respecting personal data privacy of others and the privacy risks associated with digital footprints. The PCPD also launched a TV docu-drama series entitled "Privacy Beyond Price II" in partnership with RTHK, featuring privacy issues such as CCTV surveillance, DM, cyber-bullying that were based on real cases. The TV docu-drama series were broadcast from July to September 2016.

39. To provide channels for the PCPD to reach out to the community, the PCPD enhanced the information provided on its main website (PCPD.org.hk) and two thematic websites, "Be SMART Online" and "Children Privacy" in 2016. The "Be SMART Online" thematic website received the Gold Award in the "Web Accessibility Recognition Scheme", while the main website and the "Children Privacy" thematic website won the Silver Award in the same recognition scheme.

40. The PCPD conducted a study during April to June 2016 on the fitness bands and Internet of Things ("IoT") devices to explore its privacy challenges and implications. The study was part of the Sweep exercise of the Global Privacy Enforcement Network. Through the study, the PCPD sought to raise the privacy awareness of the device manufacturers and to educate the users of these devices on how to protect their personal data.

Strategic Focus for 2017

41. Over the past few years, following the technological and economic developments, the global privacy landscape has changed significantly, and so has Hong Kong. In 2017, the PCPD will keep pace with the developments in the protection of personal data in other overseas jurisdictions, take proactive steps to strike the balance between privacy protection and free flow of information, and respond promptly to meet the challenges ahead. Special focus will be placed on:

- (a) The hosting of the 39th International Conference of Data Protection and Privacy Commissioners in September 2017. The event has also been accredited by HKSAR government as one of the HKSAR's 20th Anniversary Celebration Events;
- (b) Comparative study on the EU General Data Protection Regulations, which will be effective in 2018, and the Ordinance;
- (c) Assisting the Government and the private sector in promoting and administering privacy management programmes; and
- (d) Maximising the impact of publicity and education on the awareness of privacy protection and nurturing the culture of respecting others' privacy.

Privacy Complaints in relation to Use of ICT

Year	Use of social networking websites	Use of smartphone applications	Disclosure or leakage of personal data on Internet	Cyber-bullying	Total*
2012	16	18	12	13	50
2013	45	22	42	6	93
2014	99	58	57	34	206
2015	90	71	85	22	241
2016	86	61	91	26	229

* As a complaint may cut across different categories, figures in the categories added up may exceed the total number of complaints.

Enhancement of Efficiency in Complaint Handling

	2012	2013	2014	2015	2016
Complaints received	1,213	1,792	1,702	1,971	1,838
Investigations completed	1,268	1,783	1,774	1,970	1,967
Closing a complaint case within 180 days of receipt (% of cases)	88%	89%	95%	96%	96%
Average time taken to settle a simple complaint case (days)	39	43	30	25	23
Average time taken to settle a complicated complaint case (days)	219	195	122	87	78
Investigations in progress by year-end	343	352	280	281	152
Complaint cases closed within 45 days without commencing formal investigation (% of compliance)	69%	62%	77%	86%	99%

Responses to Consultations / Vetting of Bills in 2016

PCPD provided comments in response to 12 proposed legislation and government administrative measures listed as follows:-

- (1) Judiciary Administration : Proposed Legislative Amendments relating to Non-Disclosure of Solicitors' Names in Disciplinary Proceedings in the High Court
- (2) Electoral Affairs Commission : Proposed Guidelines on Election-related Activities in respect of (i) Legislative Council Election; (ii) 2016 Election Committee Subsector Election; and (iii) Chief Executive Election
- (3) Food and Health Bureau : Proposed Committee Stage Amendments to the Private Columbaria Bill
- (4) Financial Services and the Treasury Bureau : Automatic Exchange of Financial Account Information in Tax Matters in Hong Kong
- (5) Commerce and Economic Development Bureau : draft Travel Industry Bill
- (6) Civil Engineering and Development Department : Privacy Impact Assessment and Privacy Compliance Audit for Proof of Concept Study for Multi-Link Free Flow Toll Collection System
- (7) Development Bureau : Draft Drafting Instructions regarding Construction Industry Security of Payment Legislation
- (8) Financial Services and the Treasury Bureau : Latest draft provisions of Bank of Communications (HK) Limited (Merger) Bill
- (9) Marine Department : Legislative Proposal on Safety Measures during Major Events at Sea

- (10) Security Bureau : Establishment of a Reporting System on the Physical Cross-Boundary Transportation of Large Quantities of Currency and Bearer Negotiable Instruments
- (11) Securities & Futures Commission : Proposed implementation of investor identification regime
- (12) Transport and Housing Bureau : Proposed implementation of premium taxi scheme under a franchise model

Furthermore, PCPD responded to the following public consultations from the perspective of personal data protection:-

- (1) Public Engagement for Electronic Road Pricing Pilot Scheme in Central and its adjacent areas
- (2) Public Consultation on the Draft Code of Practice for Employment Agencies

Promotion and Public Education

	2012	2013	2014	2015	2016
Major Promotional Activities					
- University Privacy Campaign (Participants)	2 570	33 299	35 000	39 626	43 424
- Student Ambassador for Privacy Protection Programme					
- Participants	2 000+	4 840	7 593	16 528	5 485
- School Partners	42	44	69	111	125
- Number of Other Activities	14	14	18	18	16
- Total Number of Participants	46 657	58 979	141 443	260 223	193 260
Education					
- Professional Workshops	71	95	90	77	46
- Seminars and Talks	167	184	155	199	209
- Total Number of Participants	16 311	20 898	14 845	18 708	25 801
Industry-specific Campaign (Participants)	1 369	1 302	1 018	2 473	221
Data Protection Officers Club (Membership)	386	357	557	535	588
PCPD Websites (Visits per Month)	45 192	75 912	55 000	50 804	54 054
Information leaflets, guidance notes and Codes of Practice issued (Cumulative)	32	39	52	70	86

