

Complaint Form

Case No.:									
For Official Use									

Please read the “**Information Notes**” attached to this form carefully before completing the form.

All information requested in this form is **compulsory**, unless stated otherwise.

Warning:

- Failure to provide the compulsory information may render your complaint not to be processed by the Office of the Privacy Commissioner for Personal Data, Hong Kong (the “PCPD”).
- It is a criminal offence under section 50B(1)(c) of the Personal Data (Privacy) Ordinance (Cap. 486) (the “Ordinance”) if you state anything which you know to be false or do not believe to be true, or knowingly mislead the Commissioner or his officers during the course of their enquiry or investigation of your complaint; you will be liable on conviction to a fine at level 3 and to imprisonment for 6 months.

Are you making a complaint about your **own** personal data? (see notes 2 and 3) Yes No

(If “No”, you are generally **not entitled to make this complaint**, unless you are a “relevant person” (see note 4), or you are authorised by the complainant to do so. If you are the relevant person or you are authorised by the complainant, please provide your information in Section II “Relevant person” below, in addition to the complainant’s information in Section I.)

Do you consent to the disclosure of your identity to the party complained against? Yes No

(If “No”, and the matter complained of involves only you, the PCPD is **unable to carry out an inquiry** with the party complained against.)

I. Complainant

Name (*Mr/Ms/Miss): _____

(As recorded on the identification document, e.g. Hong Kong Identity Card, passport.) (see notes 11 and 12)

Identification Documents (Type & No.) (Optional): _____

(For verifying your name, please produce the original of your identification document if you lodge your complaint to the PCPD in person, or attach a copy of the identification document if you send in this form other than in person.) (see notes 11 and 12)

Address: _____

Telephone: _____ Email (see note 10): _____

II. Relevant person (if appropriate) (see note 4)

Name (*Mr/Ms/Miss): _____

(As recorded on the identification document, e.g. Hong Kong Identity Card, passport.)

Identification Documents (Type & No.) (Optional): _____

Capacity: _____ (Please attach supporting documents for verification.)

Address: _____

Telephone: _____ Email (see note 10): _____

III. Party complained against (see note 5)

Name: _____

Address: _____

Contact person (if known): _____

Telephone: _____ Email (if known): _____

(*Please delete as appropriate)

IV. Complaint (see notes 8 and 9)

Date and time of the incident: _____ Place: _____

Relation between complainant and party complained against: _____

Personal data involved (see note 2): _____

Reasons of complaint:-

- Excessive collection of your personal data
- Unfair collection of your personal data
- Use your personal data for new purpose without your consent
- Use your personal data in direct marketing without prior notice or your consent
- Failing to comply with opt-out request for direct marketing
- Not keeping your personal data secure
- Not complying with your data access request / data correction request
- Retaining your personal data for too long
- Not maintaining accuracy of your personal data
- Others (please specify): _____

Describe the matter being complained: (Please use separate sheet if the space provided is not sufficient.)

(_____ page(s) of separate sheet is/are attached.)

Have you attempted to contact the party complained against? (Optional) Yes No

(If “Yes”, please outline your efforts and describe the result; if “No”, please specify if you would make further attempt to do so.)

Have you complained this matter to another body or organisation? (Optional) Yes No

(If “Yes”, please provide details and results.)

What would you expect the PCPD to help address your concern? (Optional)

(Please describe any steps or remedies that you believe would address your concern.)

Before you submit this form, please check whether the following documents are provided:-

Authorisation by the complainant Yes No N/A

Evidence in support of the complaint Yes No

(You should produce sufficient information and evidence in support of your complaint e.g. witnesses, recordings of telephone conversation, documentary proof. Otherwise, the PCPD may not be able to pursue your complaint.)

V. Personal Information Collection Statement

All personal data submitted will only be used for purposes which are directly related to this complaint. The personal data submitted may be transferred to parties who will be contacted by us during the handling of this case including the party being complained against or other parties concerned. The information provided may also be disclosed to agencies who are authorised to receive information relating to law enforcement, prosecution or review of the Commissioner's decisions.

You have the right to request access to and correction of your personal data held by us. Request for access or correction should be made in writing to the Data Protection Officer at the address shown in note 7. Please note that we shall or may refuse to comply with a data access request in the circumstances specified in section 20 of the Ordinance, for example, where the requested data relates to information obtained in the course of handling a complaint by us the disclosure of which would constitute a contravention of the requirements under the secrecy provision of section 46(1) of the Ordinance.

Sign by complainant: _____

Date: _____

Information Notes

1) How can the Privacy Commissioner for Personal Data help you?

The Privacy Commissioner for Personal Data (the “Commissioner”) is charged with the statutory duty to receive and, if appropriate, investigate any complaint from the public relating to suspected breaches of the requirements under the Personal Data (Privacy) Ordinance (the “Ordinance”).

2) What is “personal data”?

“Personal data” means the information which:-

- a) relates to a living person;
- b) can be used to identify that person, and
- c) exists in a form in which access or processing is practicable.

Examples of personal data protected by the Ordinance include names, phone numbers, addresses, identity card numbers, photos, medical records and employment records.

3) Who can complain?

An individual, or a relevant person on behalf of an individual (see note 4), may make a complaint to the Commissioner about an act or practice that affect the individual’s personal data, and may be a contravention of a requirement under the Ordinance. If the complainant authorises another party to handle his complaint, a written authorisation should be provided to the Office of the Privacy Commissioner for Personal Data, Hong Kong (the “PCPD”).

4) Who is a relevant person?

A relevant person may make a complaint on behalf of an individual, if:-

- a) that individual is a minor and the relevant person is his parent or legal guardian;
- b) that individual cannot manage his own affairs and the relevant person has been appointed by a court to manage those affairs;
- c) that individual is mentally incapacitated within the meaning of section 2 of the Mental Health Ordinance (Cap. 136) and:-
 - (i) the relevant person has been appointed under section 44A, 59O or 59Q of the Mental Health Ordinance to be his guardian; or
 - (ii) the relevant person is the Director of Social Welfare or any other person in whom the guardianship of that individual has been vested or who has to perform the functions of the appointed guardian under section 44B(2A) or (2B) or 59T(1) or (2) of the Mental Health Ordinance.

5) Who should be the party complained against?

The party complained against should be a “**data user**”. Under the definition of the Ordinance, a data user, in relation to personal data, means a person who, either alone or jointly or in common with other persons, controls the collection, holding, processing or use of the data. A person is not a data user in relation to any personal data which the person holds, processes or uses solely on behalf of another person, rather for his own purposes, e.g. where an employee process personal data in the course of his employment, generally the data user would be his employer, rather than the employee himself.

6) How is a complaint made?

A complaint should be made in writing in the Chinese or English language. The complainant may use this Complaint Form (OPS001) to provide full particulars of the complaint. If assistance is required, the complainant may visit or telephone the PCPD. All complaints will be treated in the **strictest confidence**, and in accordance with the Ordinance and the Complaint Handling Policy, which is available at:

www.pcpd.org.hk/english/complaints/policy/complaint_policy.html.

7) Where is the PCPD?

The address of the PCPD is Room 1303, 13/F, Dah Sing Financial Centre, 248 Queen’s Road East, Wanchai, Hong Kong, and the office hours are: Monday to Friday 8:45 a.m. to 12:45 p.m. & 1:50 p.m. to 5:40 p.m.; Saturday, Sunday and Public Holidays: closed. (Hotline: 2827 2827 Fax: 2877 7026 Website: www.pcpd.org.hk)

8) What information must be provided to the Commissioner for making a complaint?

In order to enable the Commissioner to process the complaint, the complainant must provide details of the **personal data** concerned and the **act or practice** that is complained of, e.g. how and when was the complainant’s personal data collected, processed, used, retained or handled. You should produce **sufficient information (including witness in some cases)** in support of your allegation. Mere speculation is insufficient to substantiate a complaint e.g. the mere possession of personal data does not mean that the personal data is collected by unfair means.

The complainant must also state by whom the act was done or the practice was engaged in, i.e. the party complained against, and provide the details as prescribed in this form. Please note that it is essential to specify and provide adequate information for identifying and locating the party complained against. Otherwise, the Commissioner may not be able to process the complaint. Mere provision of the means to trace the identity of the party complained against e.g. a website or telephone number without other information to identify the person is generally not considered as sufficient.

9) What happens after a complaint is lodged with the Commissioner?

Upon receiving from the complainant all necessary information, we shall consider if the pre-requisites of a “complaint” under section 37(1) of the Ordinance are satisfied. They are:-

- a) whether the matter relates to complainant’s own personal data;
- b) whether the party complained against is the data user (see note 5); and
- c) whether the act or practice may be a contravention of a requirement under the Ordinance.

If any one of the above conditions is not satisfied, the case will not be treated as a complaint under section 37 of the Ordinance. Accordingly, no investigation will be carried out and the complainant will be notified in writing.

If all of the above conditions are satisfied, the Commissioner will notify the complainant in writing and make enquiries with the complainant and, if necessary, the other relevant parties in order to determine whether there exists a *prima facie* case showing that a contravention of the provisions of the Ordinance has occurred.

If, having considered the available information and evidence, the Commissioner is of the opinion that no *prima facie* case exists or there are other lawful reasons under section 39(2) for which he may refuse to carry out or decide to terminate an investigation, the Commissioner shall notify the complainant in writing in accordance with section 39(3) and 39(3A).

If there is a *prima facie* case, the Commissioner may, where appropriate, try to resolve the dispute through conciliation. If the conciliation is successful (e.g. the party complained against has taken proper remedial actions), the Commissioner will exercise his discretion to refuse to carry out an investigation; if not, and subject to section 39(2), the Commissioner may carry out an investigation under section 38 of the Ordinance. If at the end of the investigation, the Commissioner finds that the party complained against is contravening or has contravened a requirement under the Ordinance and having regard to the damage or distress caused or is likely to be caused to the complainant, he may decide whether or not to serve an enforcement notice on the party complained against directing it to take such steps as specified in the enforcement notice (including ceasing any act or practice) to remedy and, if appropriate, prevent any recurrence of the contravention.

Contravention of an enforcement notice is an offence, and the PCPD will refer the case to Police for investigation. The offender is liable on conviction to a fine at level 5 and to imprisonment for 2 years; and if the offence continues after the conviction, to a daily penalty of HK\$1,000.

10) How will the PCPD use your email address?

Upon providing your email address to the PCPD, you consent that we will send correspondences to you by email. The correspondences from the PCPD may include inquiry for further information in support of your complaint, progress update and our decision in respect of the complaint. Hence you are reminded to check the email frequently.

We will encrypt sensitive information before sending it out by email. You are also reminded to do encryption when sending sensitive information to the PCPD by email.

11) Why is it important to provide the complainant’s proof of identity?

Processing or investigating of a complaint is a serious and important matter. Therefore, it is important for the complainant to provide reliable source of identification document to the PCPD for the purpose of verification of his identity. Furthermore, as stated in note 9 above, the PCPD will ascertain whether a complaint relates to the complainant’s own personal data. The failure to provide identification document may hinder the follow-up actions by the PCPD, or even render the complaint not pursuable. It must be noted that the Commissioner is entitled not to investigate an “anonymised” complaint under section 39(2) of the Ordinance.

12) What form of proof of identity is required?

A Government-issued identification document (e.g. Hong Kong Identity Card or passport), which has undergone reliable verification process, is an authoritative document for identification. In this regard, the complainant may attend the PCPD to produce the original of his identification document for verification; if the complainant sends in the complaint form other than in person, he should send a copy of the identification document to the PCPD.