

Suspected “doxxing” offence under section 64 of the Personal Data (Privacy) Ordinance - Complaint Form

Case No. :

For official use

The requirements under section 64 of the Personal Data (Privacy) Ordinance

Under section 64 of the Personal Data (Privacy) Ordinance (Cap.486) (the “Ordinance”):-

- (i) A person commits an offence if the person discloses any personal data of a data subject which was obtained from a data user without the data user’s consent, with an intent to obtain gain in money or other property, whether for the benefit of the person or another person; or to cause loss in money or other property to the data subject.
- (ii) A person commits an offence if the person (discloser) discloses any personal data of a data subject without the relevant consent of the data subject with an intent to cause any specified harm to the data subject or any family member of the data subject, or being reckless as to whether any specified harm would be (or would likely be), caused to the data subject or any family member of the data subject.
- (iii) A person commits an offence if the person (discloser) discloses any personal data of a data subject without the relevant consent of the data subject with an intent to cause any specified harm to the data subject or any family member of the data subject, or being reckless as to whether any specified harm would be (or would likely be), caused to the data subject or any family member of the data subject; and the disclosure causes any specified harm to the data subject or any family member of the data subject.

Any data subject who wishes to lodge a complaint regarding a suspected offence under section 64 of the Ordinance must complete this complaint form.

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:

- a) If you fail to provide the compulsory information, your complaint may not be processed by the office of the Privacy Commissioner for Personal Data (the “PCPD”).
- b) A person commits an offence under section 66E(5) of the Ordinance if the person, with intent to defraud, gives any material, answer, directions, explanation, particulars or statement that is or are false or misleading in a material particular in purported compliance with the requirements contained in the Commissioner’s written notice issued under section 66D. The person will be liable on conviction to a fine of \$1,000,000 and to imprisonment for 2 years.

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 5), 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 Part II “Relevant person” below, in addition to the complainant’s information in Part I.)

Do you consent the PCPD to disclose your identity as a complainant in the course of handling your complaint?

Yes No (If “No”, the PCPD is **unable to further process your case and/or to prosecute the offender.**)

Do you consent to be a witness and take statement if the PCPD conducts criminal prosecution regarding your case or refer the case to the Hong Kong Police Force for criminal investigation? Yes No

(If “No”, the PCPD is **unable to prosecute the offender, or refer the case to the Hong Kong Police Force for criminal investigation and prosecution.**)

I. Data Subject (i.e. the person whose personal information is being disclosed)

Name (*Mr/Ms/Miss): _____

(**Must** be as the same recorded on the identification document, e.g. Hong Kong Identity Card, passport.) (see notes 13 and 14)

Identification Documents (Type & No.): _____

(For verifying your identity, 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 13 and 14)

Address: _____

Telephone: _____ Email (see note 12): _____

II. Relevant person (if appropriate) (see note 5)

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 12): _____

(*Please delete as appropriate)

III. Party complained against (i.e. the person/organisation disclosed the data subject's personal data) (if known) (see notes 8 and 9)

Name of the individual/organisation: _____

Online user name (if applicable): _____ Address: _____

Telephone: _____ Email: _____

Contact person (if applicable): _____

Relationship between the party complained against and the data subject: _____

IV. Details of the disclosure of personal data (see note 8)

Personal data involved (see note 2): _____

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

If the case involves disclosure via internet, please state the relevant platforms (e.g. Facebook/Instagram):

The link of the post concerned: _____

Date and time of the post: _____ Screenshot of the post: Attached

(please use separate sheet if there is another link, and please provide relevant screenshot.)

To the best of your knowledge, whether the party complained against had obtained the consent from the data subject / the source of the data before disclosing the same? Yes No Do not know

V. The harm suffered by the data subject or/and the family member (see note 4)

Please specify what kind of "specified harm" the data subject or/and the family members had suffered because of the disclosure as stated in Part IV above (see notes 8 and 10):

(please provide relevant documents (if any) to support the harm suffered you had stated above, e.g. psychological report.)

**Before you submit this form, please check whether the following documents are provided:-
(please tick the appropriate box)**

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. the links and the screenshots of the relevant posts, telephone records/ voice messages/ text messages, witnesses, documentary proof in relation to the “specified harm” you had suffered. Otherwise, the PCPD may not be able to pursue your complaint.)

VI. Declaration

Data Accuracy

I hereby declare that, unless otherwise stated, the information given in Parts I to V above are true to the best of my knowledge and belief.

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 your legal representative (if any), the party being complained against (including its legal representative, if any), 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 66R 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 section 64 of the Ordinance, and to conduct investigation and /or prosecution against the party complained against.

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. On the other hand, in the decision of Administrative Appeal No. 49/2005, the Administrative Appeals Board decided that “false facts and fabricated evidence were not personal data”.

3) Who can lodge a complaint by using this complaint form?

This complaint form was designed for complaints in relation to suspected offences under section 64 of the Ordinance. An individual, or a relevant person on behalf of an individual (see note 5), may make a complaint to the Commissioner in relation to the suspected offence under section 64 of the Ordinance by using this complaint form. As for any act or practice that may be a contravention of a requirement under the Ordinance (other than section 64), the individual can use another designated form (OPS001) to make a complaint to the Commissioner. If the complainant authorises another party to handle the complaint, a written authorisation should be provided.

4) Who is a “data subject” and “family member”?

Under section 2(1) of the Ordinance, “data subject”, in relation to personal data, means the individual who is the subject of the data. “Family member” in relation to a person, means another person who is related to the person by blood, marriage, adoption or affinity.

5) 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.

6) How is a complaint relating to suspected offences under section 64 of the Ordinance made?

A complaint should be made in writing in the Chinese or English language. The complainant may use this complaint form (OPS004) 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 handled 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) How to contact the PCPD?

Address: Room 1303, 13/F, Dah Sing Financial Centre, 248 Queen's Road East, Wanchai, Hong Kong.
Office hours: Monday - Friday 8:45 a.m.- 5:40 p.m., Saturday, Sunday and Public Holidays: closed.
Hotline: (Enquiry in relation to suspected offences under section 64 of the Ordinance) 3423 6666
(General enquiry) 2827 2827
Email: (General enquiry) communications@pcpd.org.hk (General complaint) complaints@pcpd.org.hk
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 information as requested in this complaint form. Complainant must provide details of the personal data concerned and the act or practice that is complained of, e.g. how, when, by whom and by what means had the complainant’s personal data disclosed. If the case involves electronic communication means, please provide details as much as possible, e.g. name and link of the website/platform, the link and screenshot of the relevant post, relevant telephone records/ voice messages/ text messages, witnesses, documentary proof in relation to the “specified harm” you had suffered in support of your allegation. Mere speculation is insufficient to substantiate a complaint.

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 in relation to suspected offences under section 64 of the Ordinance is lodged with the Commissioner?

Upon receiving all necessary information from the complainant, the PCPD will consider whether the complaint relates to offences under section 64 of the Ordinance.

Briefly stated, offences under section 64 contain the following criminal elements:-

- (a) The person being complained against discloses personal data obtained from a data user without the data user's consent, with an intent to obtain gain in money or other property, or to cause loss to the data subject (offence under s.64(1));
- (b) The person being complained against discloses personal data of a data subject without the data subject's relevant consent, with the intent of (or being reckless as to the likelihood of) causing "specified harm" (see note 10 for the meaning of "specified harm") to the data subject or his/her family member (offence under s.64(3A)); or
- (c) Besides those elements referred to in (b), "specified harm" is actually caused to the data subject or his/her family member because of such disclosure (offence under s.64(3C)).

The PCPD will examine all the information provided by the complainant and will, where necessary, make inquiries with related persons or organizations for assessing whether there is sufficient evidence warranting a "specified investigation" as defined under section 66C of the Ordinance. If the Commissioner decides at this stage not to institute a "specified investigation", the case will be handled according to our general complaint handling procedure, and the complainant will be notified of the result of the case in accordance with section 39(3) of the Ordinance in writing.

A "specified investigation" will cover all relevant aspects of the case for the purpose of determining whether there is sufficient evidence to institute a prosecution.

The Commissioner's powers in respect of section 64 offences include (a) issuing "cessation notices" to persons (including organisations) directing them to cease disclosing personal data by, for instance, removing the offending message; and (b) issuing notices to persons (including organisations) requiring them to assist the investigation by providing materials, answering questions, or giving other assistance. Failure to comply with the directions or requests stated in the notices of the Commissioner constitutes criminal offence.

On the basis of the investigation results, the Commissioner will decide whether there is sufficient evidence and whether it is in the public interest to prosecute the case. Having completed an investigation, the Commissioner will inform the complainant of the result of that investigation under section 66S of the Ordinance.

10) What is "specified harm"?

Pursuant to section 64(6) of the Ordinance, "specified harm" contains four categories, including harassment, molestation, pestering, threat or intimidation to the relevant person; bodily harm or psychological harm to that person; harm causing that person reasonably to be concerned for that person's safety or well-being; or damage to the property of the person.

11) What is the prosecution deadline regarding an offence under section 64 of the Ordinance?

A prosecution for a summary offence under the Ordinance may only be commenced before the end of 2 years after the date on which the offence is committed.

12) 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.

13) 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 "anonymous" complaint under section 39(2) of the Ordinance.

14) 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.