



## USER BEWARE – COLLECTION OF PERSONAL DATA

A fitness centre chain was recently found to have breached the data privacy laws in Hong Kong by collecting excessive personal data, and an enforcement notice was issued. Awareness as to the collection of personal data, especially for corporations involves in collecting members/customers' data, is thus required.

### THE LAW

Under the Personal Data (Privacy) Ordinance (“PDPO”), data users are required to comply with the data protection principles (“DPP”) set out therein. One of the principles requires the data users not to collect excessive data in relation to a lawful purpose.

There is no clear definition as to whether a collection may be regarded as excessive or not. Care has to be taken when it comes to collection of the more sensible personal data, including identity card numbers, copies of identity card and full date of birth. In the fitness centre chain case, the Privacy Commission considered that the retaining copies of identity card and the full date of birth of its members are excessive.

The Privacy Commissioner has issued various publications, setting out practical guidelines as to whether the extent of collection of personal data may be regarded as excessive. Although these are not legally binding, non-compliance of the same would be used as evidence against the data users, shifting the burden to the data users to prove that their collection is not excessive. Usually, such burden is difficult for the data users to overcome.

### THE CASE

In the fitness centre chain case, it is found that the mere collection of identity card number is not an excessive in view of the business practice of a fitness centre, as it serves to identify the members to establish a legally binding contract, and to facilitate the initiating of claims and/or lawsuits against individual members for breaching the contract. It is suggested that data users may still collect identity card number for similar legitimate purpose without much challenge by the Privacy Commissioner.

However, when it comes to the retention of copies of the identity card and the full date of birth, both were considered as excessive by the Privacy Commissioner.

Amongst other arguments, the fitness centre raised that the collection of copies of the identity card serves to verify the members' identity for auditors, and prevent “fraud” committed by employees (under the context that employees may wish to manipulate “new members” for commission and other purposes). Prima facie, it seems that the arguments are not unreasonable, and it is not uncommon for data users to retain copies of identity card for similar purposes. However, all of the arguments put forward were rejected. The Privacy Commissioner



considered that copies of identity card shall deserve greater protection as they contain more sensitive personal data, and that the widespread indiscriminate collection of the same may subject the card holders to the risk of forgery and identity theft. The Commissioner further emphasized that the general position is not to allow data users to collect identity card copies, and even if a situation warrants the collection of the same, alternative procedures that are less intrusive must be considered. It is suggested that data users should instead check the identity card of the data subjects on spot for verification purpose, and it is not necessary to have a compulsory retention of copies of identity card.

Similarly for the full date of birth, it is also treated as another piece of sensitive information, subject to greater protection. In the context of a fitness centre, the Privacy Commissioner considered a collection of age range (for provision of age group specific services) and the month of birth (for provision of birthday gifts or similar benefit) instead of full date of birth will suffice, and there is no legitimate ground to collect the full date of birth.

It can be seen that stricter rules will be applied to the collection of the more sensitive personal data, and that in case there is alternative which may serve similar purpose, it is likely that collection of personal data will be regarded as excessive. Although it may be common for similar data users to retain copies of identity card and full date of birth, the reasoning of the Privacy Commissioner shall prompt a second thought on the data users in determining how their collection of personal data should be conducted.

## CONCLUSION

The Privacy Commissioner is taking active approach in investigating and enforcing the laws relating to collection of personal data upon receipt of complaints, and data users should review their existing policy of collection of personal data in order to prevent adverse publicity. Administrative convenience is unlikely to be accepted as an excuse to sacrifice the need to protect personal data, and caution is required when it comes to the dealing of sensitive personal data.

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