

Summary on the case sharing and questions & answer session

Workshop on Personal Data Privacy by the Privacy Commissioner for Personal Data (PCPD) on 10 Jul 2017

Remarks: For the background and definition of the Personal Data (Privacy) Ordinance and the data protection principles under the Ordinance, please refer to the presentation slides.

Case sharing 1:

Regarding the incident where a notebook containing research data was lost at EdUHK, it could be a case of data breach as the data include names of students and their date of birth, as well as names of schools. The compilation of the foresaid data are practicable for the identification of individual student and are personal data protected under the Ordinance.

Case sharing 2:

Under the Ordinance, personal data should be in a form in which “access to” or “processing of” the data is practicable. A HR staff of a company revealed with other colleagues the address of one the staff that was in the HR record he/she has access to. Although the information was shared to others verbally, the action constituted a violation of the Ordinance as the data was originally in a form that can be accessed or processed.

Case sharing 3:

According to Principle 6 of the Ordinance, a data subject has the right to request access to his/her personal data. In a complaint to the PCPD, a university student was refused copies of his/her exam script. Upon investigation, the university had destroyed the exam script concerned after one year in accordance with its policies and procedures. It was noted that exam script itself was not practicable for the identification of an individual, and thus the case was not a breach of the Ordinance. However, in the event comments or evaluation on the student’s answers was marked on the exam script, these comments or evaluation could be personal data of the student. The same applies on the appraisal form of an employee. (For more details on the case, please see

https://www.pcpd.org.hk/english/enforcement/case_notes/casenotes_2.php?id=2007A07&content_type=0&content_nature=33&msg_id2=286)

Case sharing 4:

A complaint was received by the PCPD where the complainant was photographed by a magazine reporter without his/her knowledge. The photo was published with comments on the complainant’s outfit. The court ruled that the photo was not taken with a purpose to identify an individual nor to arouse interest of people in identifying the subject, and there was no compilation of the personal data involved. The complaint was not established. So, does taking of video during class a violation

of the Ordinance? If the video is taken for record purposes only, it does not constitute the collection of the personal data. However, if the video is taken for the purpose of assessing the performance of the staff, then the collection of personal data could be involved. The Ordinance does not prohibit the taking of photos and videos. Data subjects involved should be informed in advance that photos or videos will be taken for a specified purpose. (Pls see https://www.pcpd.org.hk/english/enforcement/judgments/files/CACV000331_1999.pdf for the court judgment.)

Case sharing 5:

In Mar 2017, two notebook computers containing personal data of the Election Committee members and electors were reported stolen by the Registration and Electoral Office. The incident was a data breach case involving principle 4 of the Ordinance on security. Although the computer was protected with multi-level of security controls, the electors were not to participate in the CE election and there was no need to bring the data that included their names and ID numbers. (For more details on the case, please see https://www.pcpd.org.hk/english/enforcement/commissioners_findings/investigation_reports/files/PCPD_Investigation_Report_R17-6429_Eng.pdf.) The loss of notebook with research data also involved principle 4 of the Ordinance.

Case sharing 6:

A complaint was received by PCPD that a menu was printed on the other side of the paper that has the complainant's ID copy on it. The menu was used to record customers' order at the restaurant. (For more information, please see https://www.pcpd.org.hk/english/enforcement/case_notes/casenotes_2.php?id=2011C04&content_type=6&content_nature=0&msg_id2=345)

Questions & Answers

Question: What if a student accidentally walked in front of the camera when we were taking videos of the campus environment? Would it constitute the collection of personal data?

Answer: It does not constitute a violation of the Ordinance as no collection of personal data was involved unless say the name of the student was revealed in the video after editing. As a good practice, we would suggest the University/department concerned to send an email to all students stating when and where video will be taken and the purpose of the video. Similarly, it would be advisable to give a note in the invitation to the participants/guests of an event that video and photos will be taken that day or during the course of proceedings.

Question: Does video-taking by the students during class constitute a breach of the lecturer's personal data, with or without informing the lecturer?

Answer: Recording simply for record or sharing with classmates only may not constitute the collection of personal data. However, recording with an intent to file a

complaint involves the collection of personal data. The University may consider introducing rules or guidelines regulating such activities in class.

Question: Students like to take videos with their mobile devices even in meetings. But it is difficult to judge the purpose of taking the video. They could use the video against you later on. Does this constitute a violation of the Ordinance on the purpose of collection of personal data?

Answer: It is difficult to judge from the act of video-taking itself. But how the video is used later and whether the video was taken with an intention to accuse someone. Let me quote the incident where a taxi driver made public a video of a mother breast-feeding on his taxi. The image of the video was very clearly. However, there was no violation of the Ordinance in this case because firstly the driver did not know the identity of the mother. Secondly, the driver did not intend to disclose the identity of the mother and there was no compilation of personal data involved. There was nothing we could do as far as the Ordinance was concerned. Yet, it does not justify what the driver did. In the case of meetings, perhaps we could consider having rules to regulate the taking of videos, audios and photos in these meetings well in advance, if needed. Again, it all depends on the purpose of video, audio or photo taking as to whether the Ordinance applies.

Question: The University often invites guests, who are known to the public, to our events where photos and videos would be taken. Does it contravene the Ordinance in anyway?

Answer: Usually guests would have expected that videos and photos would be taken. It does not necessarily constitute a violation of the Ordinance. But as a courtesy and to avoid disputes, PCPD always includes a statement that videos and photos will be taken at the event to keep parties concerned informed.

Question: What if I have CCTV outside my shop and the police used the CCTV footage to make an arrest. Could the suspect sue me for violating his/her privacy?

Answer: The Ordinance is not absolute. There are certain exceptions in the Ordinance, for instance for crime prevention, detection and handling of serious misconduct. In these circumstances, there is no need for informed consent before you take the CCTV footage. We need to strike a balance between the Ordinance and other laws of Hong Kong.

Question: We have Student Evaluation of Teaching for students to evaluate the performance of individual lecturers. According to principle 6, lecturers can request access to these SET forms? Would it be misleading to the students if we put "highly confidential" on the forms? Can we reject the request from lecturers to access the forms in cases there is only one student in the course, meaning the identity of the student can be identified?

Answer: A lecturer can access the SET regarding his/her personal data, if the SETs are conducted in a form that can be accessed and processed. According to the Ordinance, data users cannot reject requests for access on the grounds that the identity of the assessor will be revealed. There are exemptions though, like in the

event bodily or mental harm can be resulted, or the data are being used for employment-related processes. Personal data of third parties should be masked or removed when providing copies of information concerned. Comments given by a student are not the student's personal data, but the lecturer's. Perhaps, the University could add a note in the SET forms that the lecturer could exercise his/her right to request access the SET forms.

Question: At the University where most of our students are over 18 years of age, we cannot release a student's information in emergency situations like when he/she is suicidal. Is that correct?

Answer: Section 63C of the Ordinance provides exemptions in emergency situations. In such situations, we should be more concerned on the wellbeing of the student rather than his/her privacy.

Question: Are email addresses personal data? Can we provide emails that can identify an individual to a third party in the University for work-related purposes?

Answer: Emails like hellomimi@gmail.com cannot help you to identify an individual. But carol.chan@pcpd.org.hk, for instance, is enough for you to identify me. In the event the use of data has not deterred from the purpose of collection, there should be no violation to provide the data to a third party within the University.

Question: We have forms to evaluate the performance of applicants. When a request for access to the form is received, do we have to reveal the entire form or just a summary will do? What about the decision whether to admit the student that was made verbally?

Answer: Information that was not documented, was not personal data as it was in the form that cannot be accessed. Documented information should be provided upon request. It can be an abstract or a copy of the form, with third party information masked. The Ordinance did not stipulate the provision of the information must be in its original format.