

**University Privacy Campaign**

**Introduction to the**

**Personal Data (Privacy) Ordinance**

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**Personal Data (Privacy) Ordinance**



**Legislative Background**

• **Personal Data (Privacy) Ordinance came into effect on 20**

**December 1996**

• **Based on internationally accepted data protection principles**

• **Legal privacy right in the handling of personal data**

• **Legal cross-border transmission of personal data to**

**facilitate the development of e-commerce**

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**Personal Data (Privacy) Ordinance**



**Amendment of the Ordinance**

• **Gazette published on 6 July 2012**

• **Reasons for amendment:**

– **came into effect more than 15 years**

– **rapid advancement in information technology and widespread use of the Internet**

– **commercial value of personal and the growing popularity of e-commerce**

– **misuse of personal data and frequent occurrence of data leakage**

– **enhancing personal data protection by keeping in line with the international standard**

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**Personal Data (Privacy) Ordinance**



**Amendment of the Ordinance**

•**Effective dates of the Amendment Ordinance:-**

**1) provisions unrelated to direct marketing or the legal assistance**

**scheme took effect on 1 October 2012;**

**2) provisions relating to direct marketing and the legal assistance**

**scheme came into effect on 1 April 2013;**

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**Objectives of the Ordinance**



• **Protecting the privacy right of a “data subject” in respect of “personal data”, but general privacy issues are not protected.**

**“Data Subject”**

**A data subject refers to the living individual who is**

**the subject of the “personal data” concerned.**

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**Definitions under the Ordinance**



**“Personal Data” should satisfy three conditions:**

**(1) relating directly or indirectly to a living individual;**

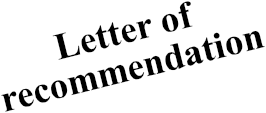
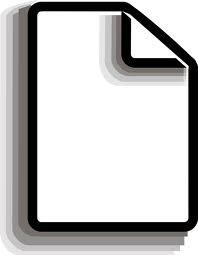
**(2) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and**

**(3) in a form in which “access to” or “processing of”**

**the data is practicable.**

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**Definitions under the Ordinance**



**“Data”:**

**any representation of information in any document,**

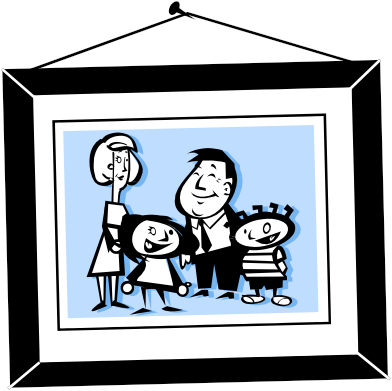
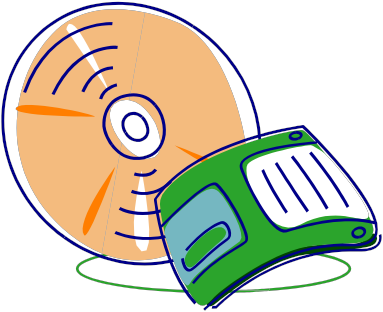
**including expression of opinion or personal**

**identifier (e.g. ID Card Number).**

**Performance Appraisal Report**

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**Definitions under the Ordinance**



**“Document”:**

**In addition to written document, “document” includes visual or non-visual device, e.g. photo, audio tape, video tape, optical disc.**

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**Definitions under the Ordinance**



**Other examples of “Document”:**

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**Examples of Personal Data**



**Student:**

 **Name, age, address, past and current academic record, interview record, teachers’ comments, etc.**

**Staff members**：

 **Resume, tax return, medical record, interview record, performance appraisal report**

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**The Ordinance Governs All Data Users**



**“Data User”**

• **Any person (including private and public sector organizations and government departments) that controls the collection, holding, processing or use of**

**“personal data”.**

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**Data Protection Principles under the Ordinance**

• **The six data protection principles form the base of the Ordinance.**

• **Data users must comply with the six data protection principles in the collection, holding, accuracy, retention period, security, privacy policy and access to and correction of personal data.**

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**Six Data Protection Principles (DPPs)**



• **DPP 1** － **Purpose and manner of collection**

• **DPP 2** － **Accuracy and duration of retention**

• **DPP 3** － **Use of personal data**

• **DPP 4** － **Security of personal data**

• **DPP 5** － **Information to be generally available**

• **DPP 6** － **Access to personal data**

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**Principle 1 – Purpose and manner of collection**



• **shall be collected for purposes related to the**

**functions or activities of the data user**

• **the data collected should be adequate but not**

**excessive**

• **the means of collection must be lawful and fair**

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**Example of unfair collection –**

**blind advertisement**

**Company Assistant**

- Form 5 or above

- Knowledge of company secretarial duties

**Please send resume to PO Box 100**

**Company Assistant**

- Form 5 or above

- Knowledge of company secretarial duties

**Interested parties please contact**

**Miss Chan on 2808-xxxx**

•Submission of personal data by job applicants

•No identity of the employer provided

•No notification of purpose of use of the data

•Job applicants are denied of data access rights

•No submission of personal data by job applicants

•Contact person provided from whom applicants:

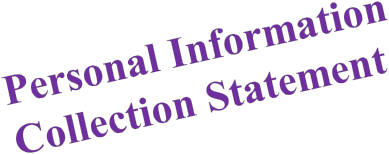
- may seek to identify the employer

- may seek information about purpose statement



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**Principle 1 – Purpose and manner of collection**



**inform the data subject of the following immediately or in advance:**

**a) the purposes of data collection;**

**b) the classes of persons to whom the data may be transferred;**

**c) whether it is obligatory or voluntary for the data subject to supply**

**the data;**

**d) where it is obligatory for the data subject to supply the data, the consequences for him if he fails to supply the data; and**

**e) the name or job title and address to which access and correction**

**requests of personal data may be made.**

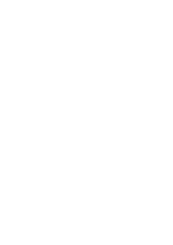
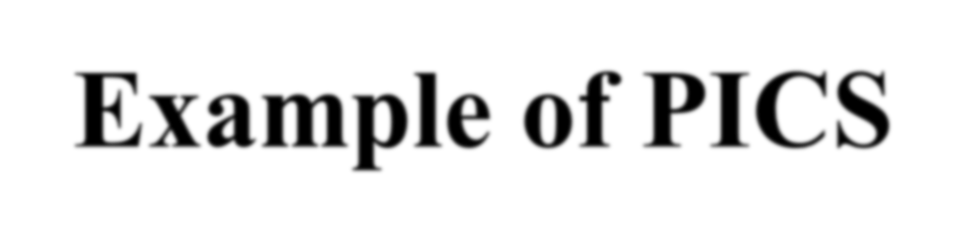
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**Example of PICS**

**The Alpha Corporation**

**Personal Information Collection Statement pertaining to Recruitment**

**The personal data collected in this application form will be used by the Alpha Corporation to assess your suitability to assume the job duties of the position for which you have applied and to determine preliminary remuneration, bonus payment, and benefits package to be discussed with you subject to selection for the position.**



**Personal data marked with (\*) on the application form are regarded as mandatory for selection purposes. Failure to provide these data may influence the processing and outcome of your application.**

**It is our policy to retain the personal data of unsuccessful applicants for future recruitment purposes for a period of two years. When there are vacancies in our subsidiary or associate companies during that period, we may transfer your application to them for consideration of employment.**

**Under the Personal Data (Privacy) Ordinance, you have a right to request access to, and to request correction of, your personal data in relation to your application. If you wish to exercise these rights, please complete our "Personal Data Access Form" and forward it to our Data Protection Officer in the Human Resources.**

Purpose

Statement

Obligatory or optional to provide data

Classes of transferees

Access & correction right **17**

**Principle 2 – Accuracy and duration of retention**



• **Data users shall take practicable steps to ensure the accuracy of personal data held by them.**

• **All practicable steps must be taken to ensure that personal data is**

**not kept longer than is necessary for the fulfillment of the purpose**

• **If a data user engages a data processor to process personal data on the data user’s behalf, the data user must adopt contractual or other means to prevent any personal data transferred to the data processor from being kept longer than is necessary for processing of the data**

***“Information Leaflet: Outsourcing the Processing of Personal Data to***

***Data Processors”***

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**Principle 3 – Use of personal data**



• **Personal data shall not, without the prescribed consent of**

**the data subject, be used for a new purpose.**

• **Allow a “relevant person” to give prescribed consent for**

**the data subject under specified conditions**

*New purpose means any purpose other than the purposes for which they were collected or directly related purposes*

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**Principle 4 – Security of personal data**



• **All practicable steps shall be taken to ensure that personal data are protected against unauthorized or accidental access, processing, erasure, loss and use**

• **Security in the storage, processing and transmission of data.**

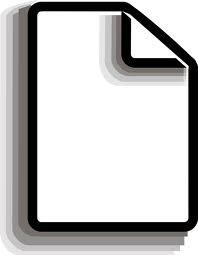
• **If a data user engages a data processor to process personal data on the data user’s behalf, the data user must adopt contractual or other means to prevent unauthorized or accidental access, processing, erasure, loss or use of the data transferred to the data processor for processing**

***“Information Leaflet: Outsourcing the Processing of Personal Data to Data***

***Processors”***

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**Principle 5 – Information to be generally available**



**Data users have to provide**

**(a) policies and practices in relation to personal data;**

**(b) the kind of personal data held;**

**(c) the main purposes for which personal data are used.**

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**Privacy**

**Policy**

**Principle 6 – Access to personal data**



• **A data subject shall be entitled to**

**(a) request access to his/her personal data;**

**(b) request correction of his/her personal data.**

• **Data user may charge a fee for complying with**

**the data access request**

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**New Regulatory Regime of Direct Marketing**



• **Part VIA of the Ordinance : 35A to 35M**

• **More stringent regulation and higher penalties**

• 「**Opt-out Mechanism**」**unchanged**

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**Use of Personal Data in Direct Marketing**



• **What is Direct Marketing?**

**“Direct Marketing” is defined to mean**

*a. the offering, or advertising of the availability, of goods, facilities or services; or*

*b. the solicitation of donations or contributions for charitable, cultural, philanthropic, recreational, political or other purposes,*

*through* ***direct marketing means***

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**Use of Personal Data in Direct Marketing**



• **“Direct marketing means” is further defined to mean**

*a. sending information or goods, addressed to specific persons by name, by mail, fax, electronic mail or other means of communication; or*

*b. making telephone calls to specific persons.*

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**Intends to use personal data or provide personal data to another person for use in direct marketing**

**Data User**

**Notification**

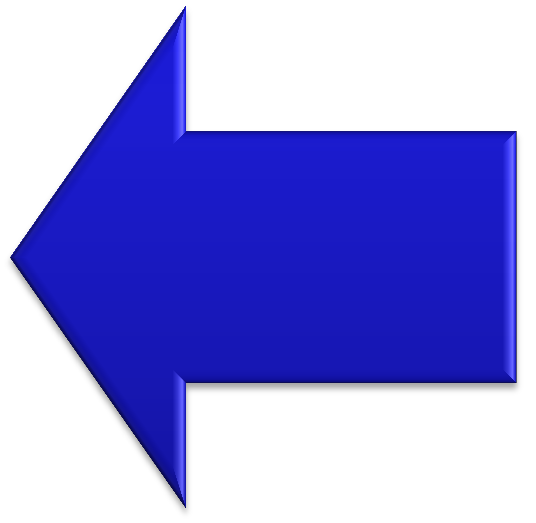
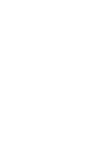
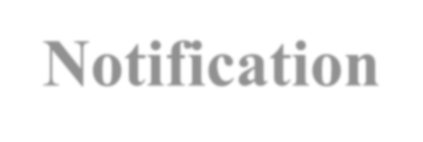
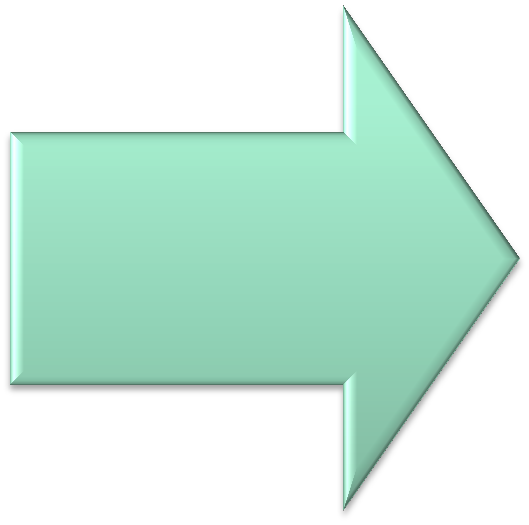
**Data Subject**

**Consent**

**Provision of**

**Personal Data**

 **Provide data subjects with “prescribed information” and response channel through which the data subject may elect to give consent**



 **Notification should be easily understandable**

 **Should be given explicitly and**

**voluntarily**

 **“consent” includes an indication of “no objection”**

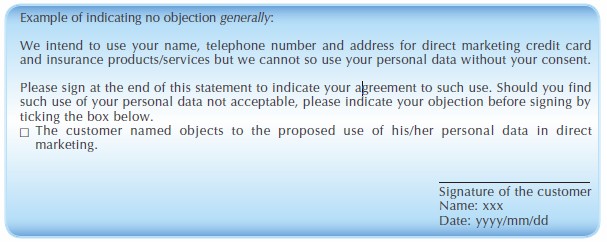
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**Prescribed information**：

|  |  |
| --- | --- |
| **Use of Personal Data in Direct Marketing** | **Provide Personal Data to another person for Use in**  **Direct Marketing** |
| 1. The data user intends to use the personal data of  the data subject for direct marketing; | 1. The data user intends to provide the personal data of the data subject to another person for use by that person in direct marketing; |
| 2. The data user may not so use the data unless the data user has received the data subject’s consent to the intended use; | 2. The data user may not so provide the data unless it has received the data subject’s **written consent** to the intended provision; |
| 3. The kinds of personal data to be used; | 3. The provision of the data is **for gain** (if it is to be so provided); |
| 4. The classes of marketing subjects in relation to  which the data is to be used; | 4. The kinds of personal data to be provided; |
| 5. The response channel | 5. The classes of persons to which the data is to be provided; |
|  | 6. The classes of marketing subjects in relation to which the data is to be used; and |
|  | 7. The response channel |

**“Consent” includes**



**an “indication of no objection”**

**Return the signed form but did not check the box indicating**

**objection = consent**

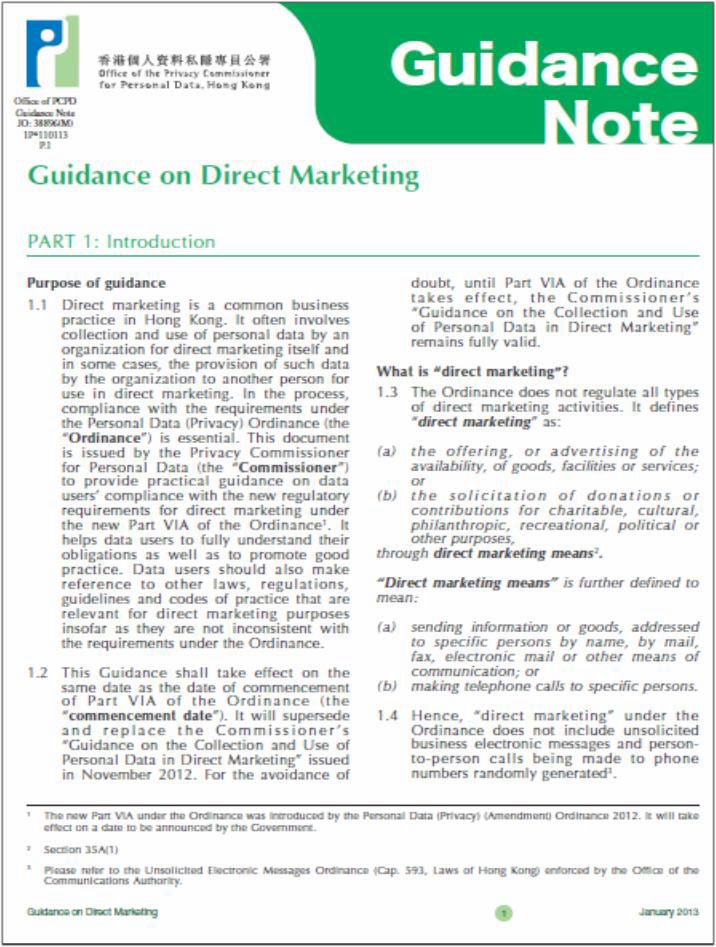
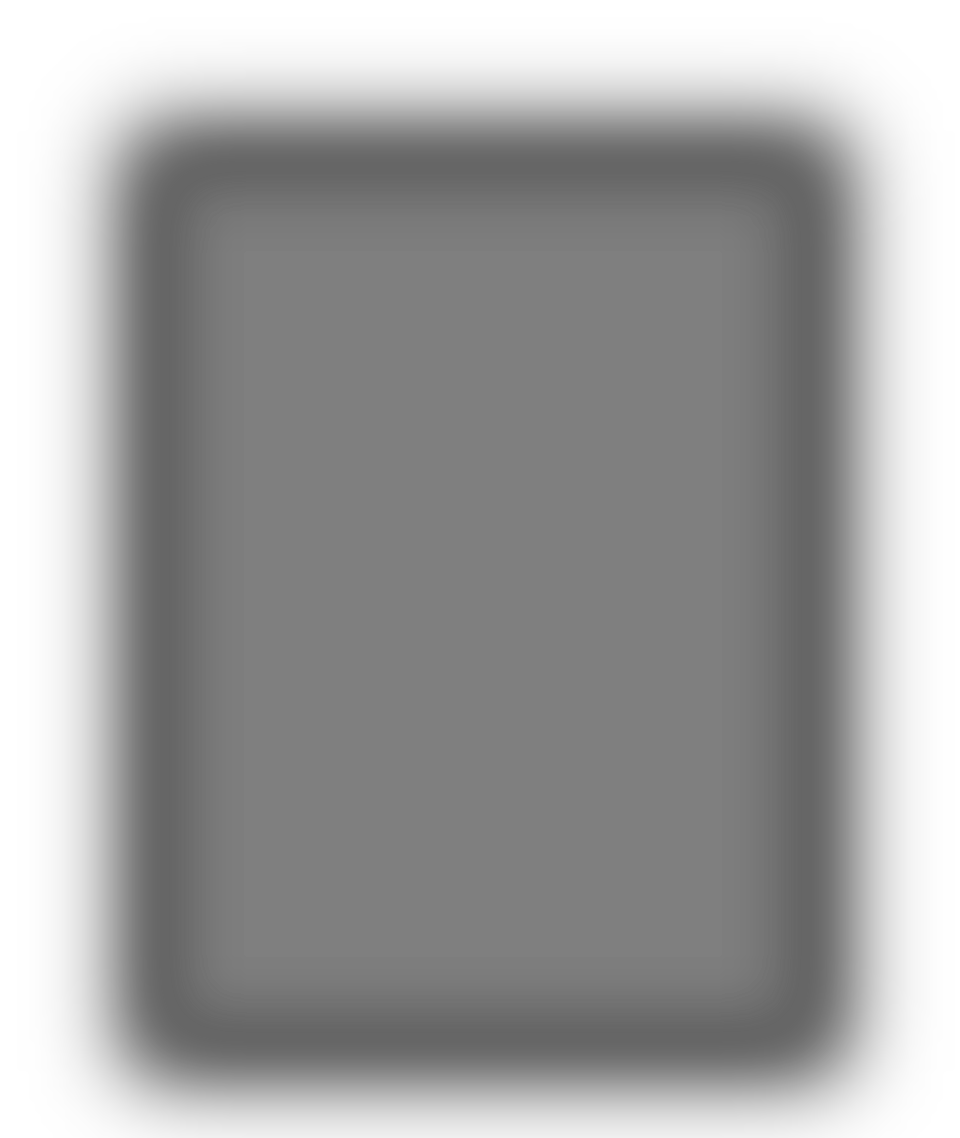
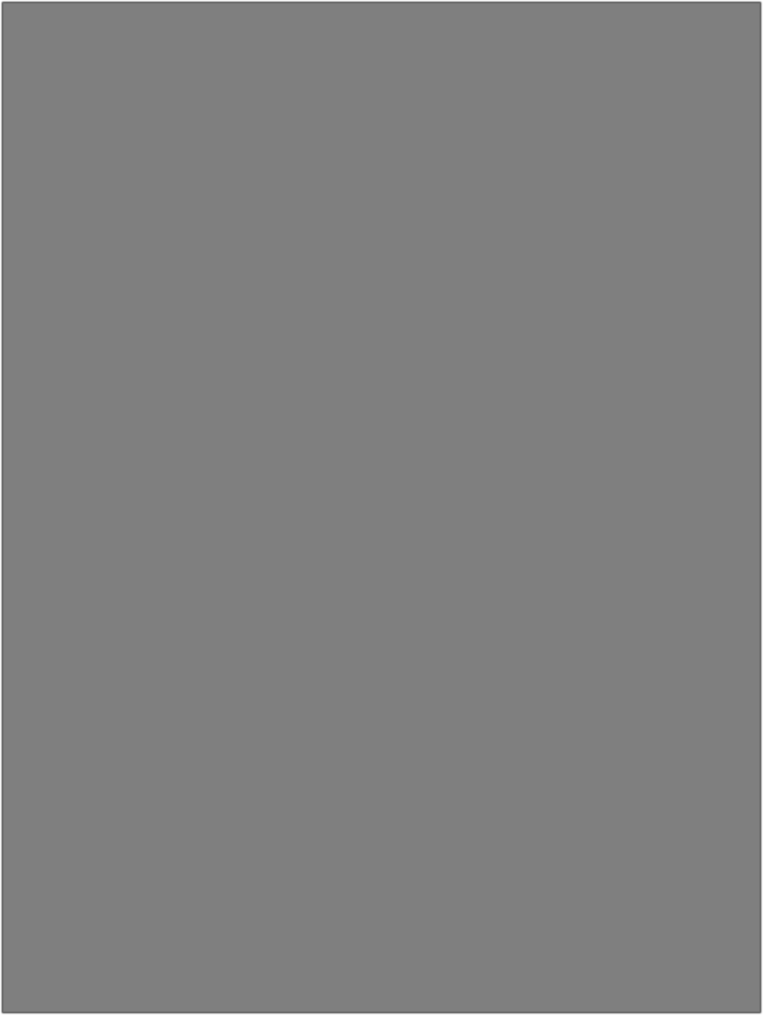
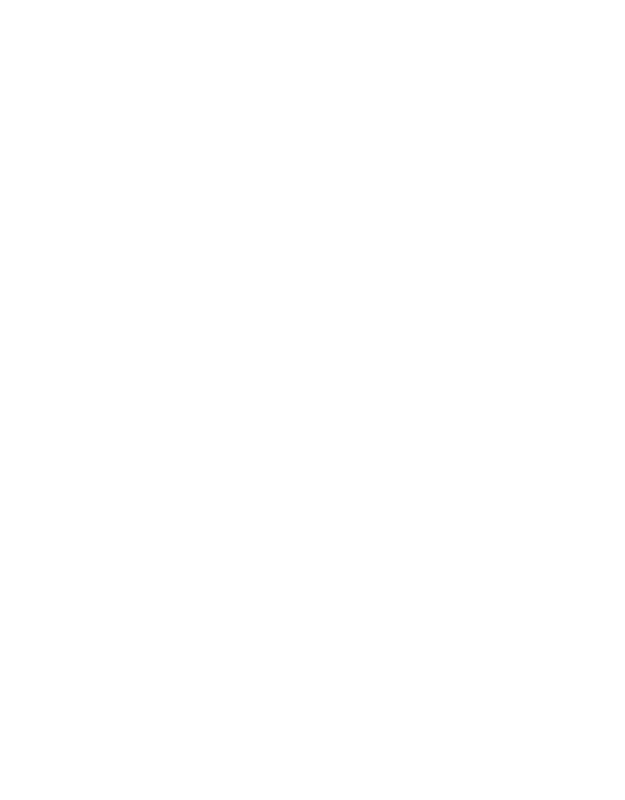
**New Regulatory Regime of Direct Marketing**



**Higher Penalties for Non-Compliance**

|  |  |  |
| --- | --- | --- |
|  | **Maximum Fine**  **(HK$)** | **Maximum**  **Imprisonment** |
| Non-Compliance | 500,000 | 3 years |
| Non-Compliance if the personal data is provided to third party for its use in direct marketing in exchange for gain | 1,000,000 | 5 years |

**Guidance to help data user**



 "**New Guidance on Direct Marketing**"(Jan 2013 edition), explaining the requirements under the new regime and providing practical guidance to data users.

 **Professional Workshop,** to familiarise organisations with the new provisions and compliance measures.

**Offences**



• **Contravention of DPP is not an offence. The Commissioner may serve an enforcement notice on the relevant data user directing the data user to remedy the contravention.**

• **Non-compliance with an enforcement notice commits an offence and carries a penalty of a fine at $50,000 and imprisonment of 2 years.**

• **Same infringement of the second time commits an offence and carries a**

**penalty of a fine at $50,000 and imprisonment of 2 years**

• **Repeated non-compliance with enforcement notice carries a penalty of a fine at $100,000 and imprisonment of 2 years, in case of a continuing offence, a daily fine of $2,000**

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**Offences**



• **Section 64 provides that “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 –**

**a) With an intent –**

**1) to obtain gain in money or other property, whether for the benefit of the person or another person; or**

**2) to cause loss in money or other property to the data**

**subject; or**

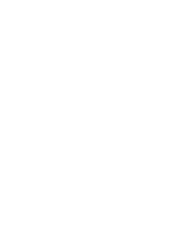
**b) the disclosure causes psychological harm to the data**

**subject.**

• **Maximum penalty: a fine of $1,000,000 and 5 years’ imprisonment**

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**Compensation**

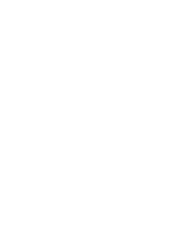


• **New section 66B : Privacy Commissioner can grant assistance to data subject in respect of these legal**

**proceedings**

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**Code of Practice**



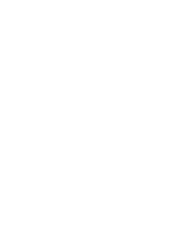
• **Identity Card Number and other Personal Identifiers**

• **Human Resource Management**

• **Consumer Credit Data**

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**Guidelines and leaflets**



• **Information Leaflet: An Overview of the Major Provisions of the Personal Data (Privacy) (Amendment) Ordinance 2012**

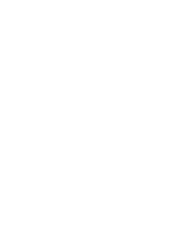
• **Information Leaflet: Outsourcing the Processing of**

**Personal Data to Data Processors**

• **Information Leaflet: Offence for disclosing personal data obtained without consent from the data user**

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**Guidelines and leaflets**



• **New Guidance on Direct Marketing**

• **Guidance on Preparing Personal Information**

**Collection Statement and Privacy Policy Statement**

• **Monitoring and Personal Data Privacy at Work**

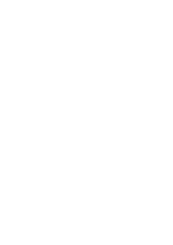
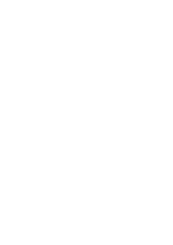
• **Guidance on Collection of Fingerprint Data**

• **Guidance on CCTV Surveillance Practices**

• **Guidance on Data Breach Handling and the Giving of Breach Notification**

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**Guidelines and leaflets**



• **Guidance on the Use of Portable Storage Devices**

• **Guidance for Data User on the Collection and Use of**

**Personal Data through the Internet**

• **Guidance on Personal Data Erasure and Anonymisation**

• **Proper Handling of Data Access Request and Charging**

**of Data Access Request Fee by Data Users**

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Pnvacy Polley Statement Search S1te 01rectory Text Only Version j{

About PCPD

The Ordinance

Review of the Ordinance

PCPD Activities

Information centre *>* Media Statement: School websites

> ProfessionalWorkshops on Direct

PersonalData Privacy

Uberal Studies

found to have exposed student data

> Media Statement: Restricti ng Access to Company Directors' Personal Information

Protect Privacy by Smart Use of Smartphones (Leaflet pdO Annual Report 2011-2012 CpdO

New Guidance on Direct Marketing Consent and Opt Out Right in Direct Marketing

Legal Assi stance Scheme

Get to Know More

Marketing (and other new subjects)

> Public Seminars FREE

> Student Ambassador Programme

> TV Docu-dramaPrivacy Beyond Price"

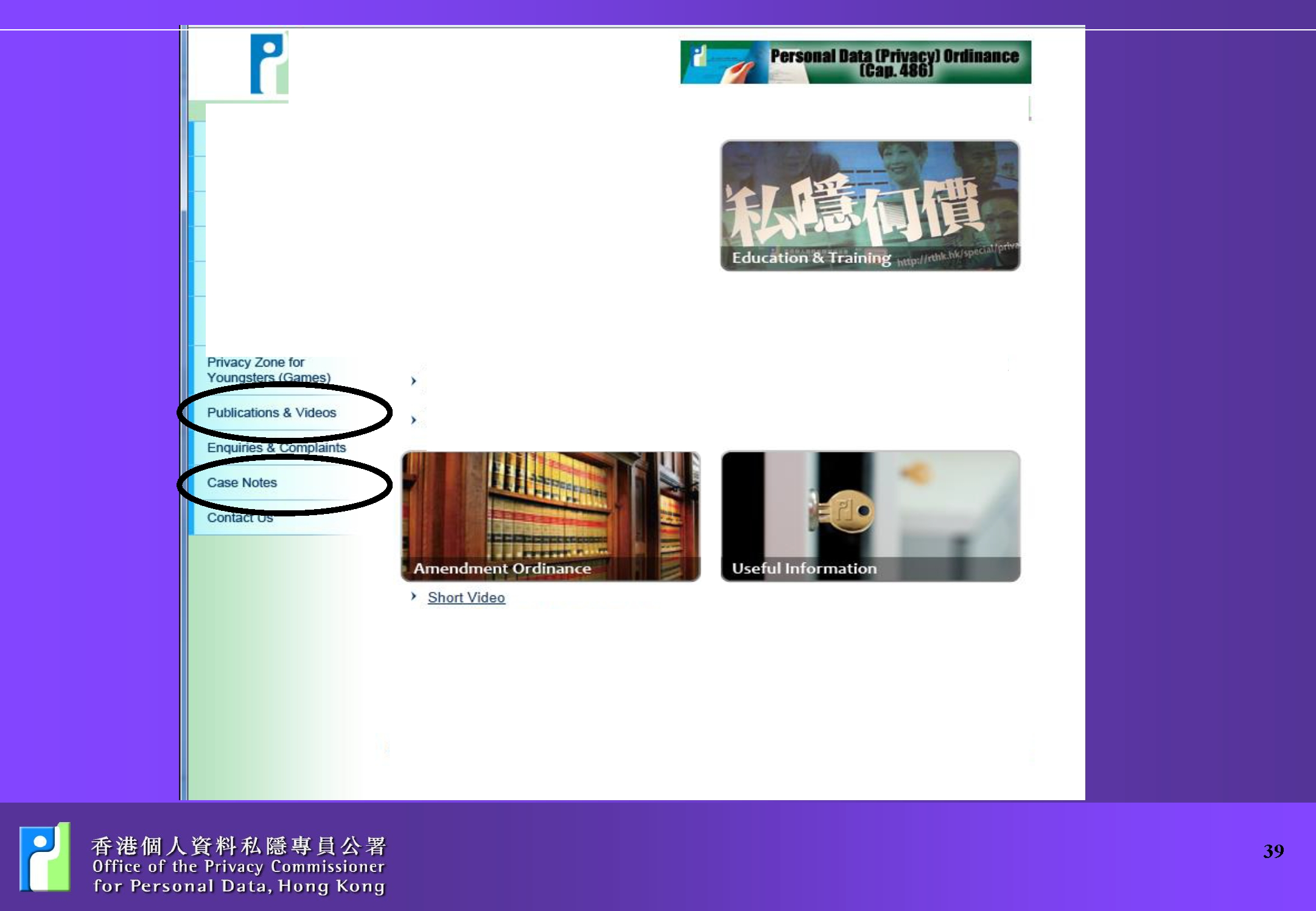
> More

> FAO about My Privacy

Data Protection Principl es

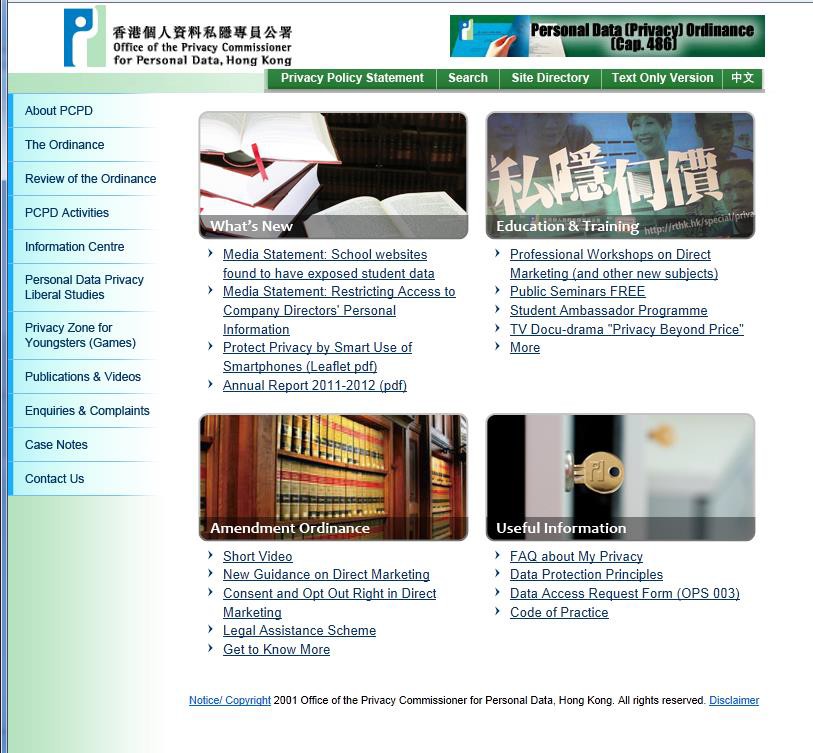
Data Access Request Form COPS 003)

) Code of Practice



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