

Guidance on Electioneering Activities

Introduction

This guidance note serves as a general reference on compliance with the requirements under the Personal Data (Privacy) Ordinance ("the Ordinance") in relation to electioneering activities that may involve the collection and use of personal data of individuals. Very often, candidates and/or their election agents make electioneering approaches by telephone to prospective voters. Candidates may also choose to lobby potential voters by other approaches such as fax messages, SMS/MMS or E-mails. In some cases, the individuals have no previous dealings with the caller and/or the candidate and they are concerned that the candidate might have obtained their personal data from sources other than the voter register.

The act of canvassing for votes is not in contravention of the Ordinance provided that handling of personal data is in compliance with the data protection principles in schedule 1 to the Ordinance. Of particular relevance are the requirements under data protection principles 1, 2(2), 3 and 4 ("DPP1", "DPP2(2)", "DPP3" and "DPP4") in Schedule 1 to the Ordinance:

DPP1(1) requires that personal data should not be collected unless the data are collected for a lawful purpose directly related to a function or activity of the data user and the data collected is necessary, adequate but not excessive in relation to that purpose;

DPP1(2) requires that personal data shall be collected by means that are lawful and fair in the circumstances of the case;

DPP1(3) requires that on or before collecting personal data directly from a data subject, the data user shall take all reasonably practicable steps to ensure that the data subject has been informed of whether it is obligatory or voluntary for him to supply the data and the consequences for him if he fails to supply to

the data. The data subject should be explicitly informed of the purpose of data collection and the classes of transferees to whom the data might be transferred as well as the contacts to whom the request of access to and correction of the data subject's personal data might be made;

DPP2(2) requires that personal data shall not be kept longer than is necessary for the fulfillment of the purpose (including any directly related purpose) for which the data are or are to be used;

DPP3 provides that personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than the purpose for which the data were to be used at the time of collection of the data or a directly related purpose; and

DPP4 requires that all reasonably practicable steps be taken to ensure that personal data are protected against unauthorized or accidental access, processing, or other use.

Guidance for Candidates

1. Candidates who seek to collect and use personal data in electioneering should be mindful of the provisions in DPP1, DPP2(2), DPP3 and DPP4.
2. Candidates should assume direct responsibility for briefing and supervising members of their campaign staff to ensure their compliance with the requirements of the DPPs.
3. When collecting personal data directly from an individual or indirectly from a third party (e.g. a trade union or professional body) for the purpose of electioneering, only adequate but not excessive personal data necessary for electioneering purpose shall be collected (e.g. Hong Kong Identity Card number should not be collected).

4. Candidates who solicit personal data directly from an individual for electioneering should ensure that the individual is informed of the purpose of collection of the data.
5. Candidates should not collect personal data for electioneering by deceptive means or by mis-representing the purpose of the collection (e.g. collecting personal data in the pretext of opinion poll or assisting citizens to apply for government welfare).
6. With respect to the use of personal data gathered from the published register of voters, due care should be taken to ensure that they are used only for purposes relating to an election as prescribed by relevant election legislations.
7. Should candidates want to use personal data from sources other than the voter register for electioneering purpose, express consent from the data subject must be obtained beforehand, unless the original purpose of collection of the data is directly related to the electioneering purpose.
8. With respect to the use of personal data gathered by a third party, e.g. a trade union or professional body as a means of accessing members of those bodies for electioneering purpose, the proper course of action would be for these bodies to determine whether this is a permitted purpose for which the personal data were collected, and such electioneering communication should preferably be handled by these bodies. As a matter of good practice, prior notification to members of such use of their data is recommended.
9. When candidates or their election agents contact individual voters for electioneering purpose, they should inform the voters how they obtained the voters' personal data when being asked.
10. As a matter of good practice, when canvassing for votes from individuals directly by the candidates, their agents or indirectly through a third party (e.g. trade

union or professional body), the individuals should be provided an option to decline receipt of any subsequent electioneering communication in relation to the election from the candidate so that they would not receive any unwanted electioneering communication from the candidate.

11. As a matter of good practice, candidates should maintain a list of individuals who, to their knowledge, find electioneering communication such as phone calls, mails, fax messages, E-mails or visits objectionable and avoid approaching them to canvass for votes.
12. When conducting electioneering activities, candidates and their election agents should safeguard the personal data in the list of voters held by them to prevent accidental or unauthorised access by unrelated parties.
13. Candidates should not retain any personal data collected for electioneering purpose after completion of all the electioneering activities.

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