



Guidance Note

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/voters. Candidates may also choose to lobby potential voters by other approaches such as fax messages, SMS/MMS or emails. In some cases, the relevant 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 register of electors.

Relevant Data Protection Principles

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, 3 and 4 (“**DPP1**”, “**DPP2**”, “**DPP3**” and “**DPP4**”) set out in Schedule 1 to the Ordinance:

DPP1(1) requires that personal data shall not be collected unless the data is 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 the data. The data subject shall be explicitly informed of the purpose of data collection and the classes of transferees to whom the data may be transferred as well as the name/job title and address of the individual to whom the request of access to and correction of the data subject’s personal data may be made;

DPP2(2) requires that all practicable steps must be taken to ensure that personal data is not kept longer than is necessary for the fulfillment of the purpose (including any directly related purpose) for which the data is or is to be used;

DPP2(3) requires that if a data user engages a data processor¹ (whether within or outside Hong Kong) to process personal data on its 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;

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

¹ “Data processor” means a person who processes personal data on behalf of another person and does not process the data for any of the person’s own purposes.

DPP4(1) requires that all reasonably practicable steps shall be taken to ensure that personal data is protected against unauthorised or accidental access, processing, erasure, loss, or use; and

DPP4(2) requires that if a data user engages a data processor (whether within or outside Hong Kong) to process personal data on the data user's behalf, the data user must adopt contractual or other means to prevent unauthorised or accidental access, processing, erasure, loss or use of the data transferred to the data processor for processing.

Guidance for Candidates

1. Candidates who seek to collect and use personal data in electioneering should be mindful of the provisions in DPP1, DPP2, 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 an 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 electors, due care should be taken to ensure that it is used only for purposes relating to an election as prescribed by the relevant election legislations.
7. Should candidates want to use personal data from sources other than the register of electors for an 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 an 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 was 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 an 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 with an option to decline receipt of any subsequent electioneering communication in relation to the election from the candidates concerned so that they would not receive any unwanted electioneering communication from those candidates.

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, emails 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 against accidental or unauthorised access by unrelated parties.
13. Candidates should not retain any personal data collected for an electioneering purpose after completion of all the electioneering activities.
14. When election agents are appointed or engaged by the candidates to process the personal data of voters on their behalf for electioneering purpose, the candidates must use contractual or other means to prevent the personal data transferred to the election agents from: (i) being kept longer than is necessary for the electioneering purpose; and (ii) unauthorised or accidental access, processing, erasure, loss or use. Reference can be made to the Information Leaflet on *Outsourcing the Processing of Personal Data to Data Processors*² issued by the Office of the Privacy Commissioner for Personal Data, Hong Kong.

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The information provided in this guidance note is for general reference only. It does not provide an exhaustive guide to the application of the Personal Data (Privacy) Ordinance (the "Ordinance"). For a complete and definitive statement of the law, direct reference should be made to the Ordinance itself. The Privacy Commissioner for Personal Data (the "Commissioner") makes no express or implied warranties of accuracy or fitness for a particular purpose or use with respect to the above information. The above suggestions will not affect the functions and power conferred to the Commissioner under the Ordinance.

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² Available at www.pcpd.org.hk/english/resources_centre/publications/information_leaflet/files/dataprocessors_e.pdf