

(By Hand)

Our Ref: PCO/1/12

Your Ref: CB1/PL/FA

22 December 2003

Miss Salumi CHAN  
Clerk to Panel  
Legislative Council  
3/F Citibank Tower  
3 Garden Road  
Hong Kong

Dear Miss Chan,

**Panel on Financial Affairs**  
**Enhancement of Consumer Credit Data Protection**

Thank you for your letter dated 8 December 2003 concerning matters on consumer credit data protection raised by the Hon James TO Kun-sun.

The revised Code of Practice on Consumer Credit Data sets out a comprehensive regulatory policy with respect to the collection, accuracy, use and security of consumer credit data handled by credit providers, and the credit reference agency. Complaints lodged with our Office by complainants on alleged abusive access to the credit database and misuse of credit data will be investigated in accordance with the provisions of the Code, which is supported by the data protection principles of the Personal Data (Privacy) Ordinance. The question of whether the Code requires amendment may arise if, subject to complaint investigations, the data protection safeguards provided for in the regulatory policy were found inadequate to deal with suspected abusive use of the system. At present, there is no evidence that this is the case in our investigation of complaint cases.

As requested, I attach an Information Paper on the Implementation of the revised Code in English and Chinese (in hard and soft copy form). I hope the Panel will find the paper useful in its discussion of the matter.

Yours sincerely,

(Raymond Tang)  
Privacy Commissioner for Personal Data

Encl.

**INFORMATION PAPER FOR THE LEGISLATIVE COUNCIL  
PANEL ON FINANCIAL AFFAIRS**

**Implementation of the  
Revised Code of Practice on Consumer Credit Data**

**INTRODUCTION**

This paper provides information on the implementation of the revised Code of Practice on Consumer Credit Data in relation to the sharing of positive credit data.

**BACKGROUND**

2. In Hong Kong, the sharing of consumer credit data through credit reference agencies is governed by the Code of Practice on Consumer Credit Data (“the Code”) issued by the Privacy Commissioner pursuant to section 12 of the Personal Data (Privacy) Ordinance (“the PD(P)O”). The Code was first issued in February 1998 and took effect on 27 November of that year. Some revisions regarding data retention and disclosure were introduced in February 2002 and took effect on 1 March 2002 following a public consultation exercise conducted in May 2001. The basic aim of the Code is to provide practical guidance on the handling of consumer credit data by credit providers such as banks and credit reference agencies.

3. The combined effect of adverse economic factors upon borrowers has been evident from 1999, if not prior to that. Since then, the number of consumers reported as delinquent by financial institutions rose appreciably as did the number of petitions filed for bankruptcy. The significance of these statistics, and their rapid escalation over a short period of time, signal the need to redress the credit management situation with some urgency. The trend of rising bankruptcies and consumer debts has also been the subject of concern among Members of the Legislative Council.

4. Subsequent to the Roundtable Discussion held among industry representatives and government officials in January 2002, the Privacy Commissioner’s Office (“the PCO”) was invited to conduct an in-depth study of the privacy-related issues arising from the industry’s proposal to broaden the sharing of consumer credit data to include positive credit data via the credit reference agency. The view taken was that the effective utilization of shared information could facilitate better credit risk management which, in turn, would

contribute towards alleviating the problems of growing consumer indebtedness and personal bankruptcy.

## **THE PUBLIC CONSULTATION**

5. On 28 August 2002, the PCO issued a public consultation document to seek public views on a set of proposed provisions on consumer credit data protection. In essence those provisions were designed to make the consumer credit market less opaque by permitting the sharing of limited positive credit data that would be subject to specific privacy measures and controls designed to safeguard the data privacy of consumers. At the Panel's meeting held on 24 September 2002, the Privacy Commissioner had the opportunity to consult with Members matters relating to the proposal.

6. The public consultation ended on 25 October 2002. A total of 282 written submissions were received from various sections of the community. A majority of submissions (56%) were in support of the proposal subject to the privacy safeguards mandated by the PCO. Of the 282 submissions, 219 submissions were from individuals, in which 109 respondents offered their support to the proposal. The responses reflected a clear expectation of the "good" borrowers, i.e. those who manage their financial affairs prudently, that they should be rewarded by credit providers and charged a more favourable rate of interest on their borrowings, i.e. the benefits of risk-based pricing.

7. In many of the submissions from individuals that were opposed to the proposal there was something of an "anti-bank" sentiment based upon the view that the banks should be held culpable for the poor performance of their credit card and personal loan operations. Other respondents who opposed to the proposal held the view that the sharing of positive credit data would run an unacceptable risk of unauthorized access by employees of credit providers, which would inevitably lead to the abusive use of data.

8. The PCO fully acknowledge that there are privacy issues that are of concern to consumers. In order to allay their fears, the PCO have made revisions to strengthen the proposed privacy safeguards that credit providers are required to comply with. The checks and balances in the system, such as consumer notification, access restrictions, abnormal access reporting and independent compliance auditing, are expressly designed to ensure that the data privacy rights of consumers would not be diminished. Given the gravity of the situation facing the consumer credit market the PCO are of the view that a considered response to a serious economic development was justified in the public interest and that the privacy safeguards to be implemented would provide an equitable solution for the parties involved.

9. The PCO released the Consultation Report on 23 January 2003 recommending revisions to the Code to give effect to a new regulatory framework on consumer credit data sharing. The revised Code was published following the notification in the Gazette on 23 May 2003. The revisions took effect from 2 June 2003. A copy of the revised Code is enclosed with this paper for Members' reference.

## **FOLLOW-UP ACTIONS AND COMPLIANCE MONITORING**

10. In promulgating the revised Code, the PCO have endeavoured to strike a reasonable balance between the need to share consumer credit data and the need to safeguard data privacy. The PCO are mindful of its obligation to ensure compliance of the Code and various follow-up actions have been initiated in this regard. They are summarized below.

(a) ***Public education and promotion.*** Since the launch of the revised Code, the PCO have conducted 4 seminars/workshops targeted at representatives of the financial industry to explain the various compliance requirements of the Code. Representatives were from individual credit providers as well as members of the Hong Kong Institute of Bankers. On promoting awareness to consumers, the PCO published a fact sheet titled "Code of Practice on Consumer Credit Data – How Does It Affect you?" explaining the impact and benefits of positive credit data sharing. More than 3,800 copies and 1,300 copies were provided to District Offices and the Consumer Council Advice Centre respectively for their distribution to the general public. The fact sheet was also accessible via the PCO website and so far more than 2,000 visitors have downloaded the fact sheet. In December 2003, the PCO participated in a "Debt management" seminar organized by the Caritas Family Crisis Support Centre to explain the data privacy rights of borrowers. Audience of the seminar included people who were experiencing financial difficulty in loan repayment.

(b) ***Enquiry and complaint handling.*** A special task force was set up in June 2003 dedicated to respond to enquiry and complaint cases made to the PCO that related to the implementation of the revised Code. Up to the end of November 2003, the PCO responded to over 400 written enquiry cases. For the same period, the PCO received 14 complaint cases alleging non-compliance of the requirements of the Code by credit providers/credit reference agency. The figure represents 2.8% of the total 502 complaint cases received by the Office during that period. Investigations in respect of 6 complaint cases have been completed and there are no evidence at this stage that reveal any abuses of the system by credit providers.

Specific details of the complaint cases are not included in this paper as the Privacy Commissioner is subject to a legal duty of secrecy under section 46(1) of the PD(P)O. This legal requirement is to protect the confidentiality of any information obtained by the PCO in the course of an investigation.

- (c) ***Liaison with HKMA.*** Prior to the revised Code coming into operation, the PCO provided comments to the HKMA in its preparation of a statutory supervisory guideline to be issued under section 16(10) of the Banking Ordinance. This guideline sets out the minimum standards that authorized institutions should observe in relation to the sharing and use of consumer credit data. The PCO was subsequently informed that the guideline took effect on the same date as the revised Code and that the HKMA had taken steps to encourage other lending institutions to adopt similar guideline so as to comply with the requirements of the Code.
- (d) ***Benefits to consumers.*** In its submission to the PCO, the Consumer Council called on the industry and government to inform consumers of the benefits that are likely to accrue to them, and to establish quantifiable benchmarks upon which the benefits could be measured. The matter was also referred to the HKMA. The PCO was given to understand that a broad consensus had been reached within the banking sector that outcomes would be measured over a two-year period to gauge the effectiveness of positive data sharing.

The Consumer Council had also suggested that consumers should be given a right to obtain a free copy of credit report. The PD(P)O makes no provision for such individual right. On the other hand, section 28 of the PD(P)O provides that a data user may impose a fee for complying with a data access request that should not be excessive. Nevertheless, the PCO conveyed the suggestion to the credit reference agency for its consideration and was pleased to learn that the agency had favourably considered the suggestion. Commencing June 2003, the agency provides a free copy of a credit report to the consumer if his credit application has been denied based on any information contained in the credit report. This arrangement is conditional upon the consumer in making the request within 30 days of notice of refusal and the presentation of the refusal notification when making the request. According to the credit reference agency, it has entertained over 430 such requests during the period from June to end November 2003.

- (e) ***Privacy compliance audit.*** The revised Code makes specific provision requiring the credit reference agency to carry out the first independent privacy compliance audit within 6 months from the effective date. The audit, as required by the Code, will cover the way in which the credit reference agency provides the consumer credit reference service,

including the security of consumer credit data held by the agency in its database and the adequacy and efficiency of the measures taken by it to comply with the requirements of the PD(P)O and the Code. It is expected that the efficiency of controls over abusive use of the system falls within the scope of coverage of the audit. The revised Code also mandates a submission of the audit report to the Privacy Commissioner within 3 months from the commencement of the audit. In this regard, the PCO reminded the credit reference agency in December 2003 of the requirements and was pleased to learn that preparation work had started and the audit report should be available before the end of February 2004.

## CONCLUSION

11. The PCO will continue its effort to administer and monitor compliance of the requirements of the revised Code. In addition to the enforcement mechanism pursuant to its complaint investigative power under the PD(P)O, the PCO intend to join forces with relevant authorities to ensure that the proposed privacy safeguards are effective and adequate to prevent any threat of abuses to the system. At the same time, the PCO will continue to monitor public opinions on the implementation that are reported by the news media. The PCO will also keep in view the development of the consumer credit market<sup>1</sup> in respect of its response to offer consumers the benefits of risk-based pricing that have been made possible by the implementation of positive credit data sharing.

*Office of the Privacy Commissioner for Personal Data  
December 2003*

---

<sup>1</sup> South China Morning Post reported on 7 September 2003 that, “Two of Hong Kong’s smaller banks have introduced new credit facilities under the tiered interest rate system which has been made possible by positive credit data sharing”.