



Circular

Circular No. 11-04 (CR)

Guidelines on the protection of personal data

- **Collect personal data from a data subject only for a purpose necessary for the performance of estate agency work for that data subject.**
- **Do not use such data for any other purpose without the prescribed consent of that data subject.**
- **Ensure that personal data held are protected against unauthorized or accidental access, processing or erasure.**
- **Provide a Personal Information Collection Statement when or before collecting personal data.**
- **Do not sell or transfer personal data to a third party without the data subjects' prior written consent.**
- **Provide a written privacy policy statement.**
- **Safeguard documents containing personal data from loss or unauthorized access when the documents are taken away from the office.**
- **Dispose of documents containing personal data properly after use.**
- **Maintain an opt-out list of individuals who have chosen not to receive further marketing approaches and formulate guidelines on the undertaking of direct marketing activities.**

Protection of Personal Data

Introduction

The collection and use of customers' personal data for direct marketing by business entities in contravention of the requirements of the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) has aroused considerable public concern recently. In the course of carrying out estate agency work, practitioners are often required to handle personal data such as name, telephone number, address, identity card number and

personal information contained in estate agency agreements, provisional agreements for sale and purchase and tenancy agreements, etc. This Circular sets out matters to which practitioners must pay attention in respect of the collection, use and handling of personal data, and the use of personal data for direct marketing, in order to comply with the PDPO.

The six data protection principles (DPPs)

1. Practitioners are reminded that with regard to their collection, use and handling of personal data, they are required to comply with the six DPPs, which, in brief, are as follows:

Purpose and manner of collection of personal data

DPP 1: Personal data shall only be collected for a lawful purpose directly related to a function or activity of the data user. Only personal data that are necessary for, or directly related to, that purpose should be collected, and the data collected should be adequate but not excessive for that purpose. The means of collection shall be lawful and fair, and the data subjects shall be informed of the purpose of collection and the classes of persons to whom the data may be transferred.

Accuracy and duration of retention of personal data

DPP 2: All practicable steps shall be taken to ensure that the personal data are accurate. The personal data shall not be kept after fulfilment of the purpose for which the data are used.

Use of personal data

DPP 3: Personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than the purpose for which they were collected or a directly related purpose.

Security of personal data

DPP 4: All practicable steps shall be taken to ensure that personal data held by a data user are protected against unauthorized or accidental access, processing, erasure or other use.

Information to be generally available

DPP 5: All practicable steps shall be taken to ensure that a person can ascertain a data user's policies and practices in relation to personal data.

Access to personal data

DPP 6: Data subjects shall have the right of access to, and correction of, their personal data.

Collection of Personal Data

2. Practitioners should collect personal data from a data subject only for a purpose necessary but not excessive for the performance of estate agency work for that data subject.
3. On or before collecting personal data, such as for the signing of an estate agency agreement, practitioners should provide to the data subject a Personal Information Collection Statement (PICS) stating clearly the purpose of collecting the data, the classes of persons to whom the data may be transferred, and the consequences of failing to provide the data and right of access to the data. When preparing a PICS, practitioners may refer to the guidelines in the leaflet "Preparing on-line Personal Information Collection Statements and Privacy Policy Statements" (Leaflet) issued by the Privacy Commissioner for Personal Data (PCPD), which may be downloaded from the PCPD website (<http://www.pcpd.org.hk>), and are advised to seek legal advice, if necessary.
4. In the course of carrying out estate agency work, practitioners may need to collect identity card numbers and copies of identification documents from the vendor pursuant to section 13(3) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Practice Regulation). Practitioners are reminded that they should observe the guidelines set out in the Code of Practice on Identity Card Number and other Personal Identifiers issued by the PCPD, which may be

downloaded from its website. The vendor should be advised of the purpose of collection, and practitioners should take all practicable steps to ensure that the copy of the vendor's identity card or other identification document is kept securely and that it is destroyed after the fulfilment of the purpose (e.g. upon completion of the sale and purchase).

Use of Personal Data

5. In general, practitioners should use the personal data they collect from a data subject only for purposes relating to the discharge of estate agency work for that data subject.
6. Practitioners should note that under the PDPO, “use”, in relation to personal data, includes “disclose” or “transfer” the data. Unless data subjects expressly and voluntarily consent, practitioners should not disclose the personal data of data subjects to another estate agency or use such data for their own private purposes. Practitioners should **not** sell or transfer personal data to a third party for monetary or in-kind gain, or otherwise, without the prior written and voluntary consent of the data subjects and first informing them in writing of the kinds of personal data to be sold or transferred, and to whom their personal data will be sold or transferred.
7. Practitioners introducing other services, such as legal or mortgage services, to data subjects should therefore obtain their express and voluntary consent before transferring their personal data to the service suppliers, such as legal firms or financial institutions.
8. Practitioners may from time to time collect an individual's personal data from a source other than the individual himself: for example, the personal data of the registered owners of properties obtained through the Land Registry. Practitioners should note that the source of the information may specify the purpose for which the personal data may be used, and the source may even contain a specific prohibition against the use of the personal data

for direct marketing activities. Practitioners using the personal data so obtained beyond the specified purpose or against the specific prohibition may breach the PDPO.

9. Practitioners should provide their clients with a written privacy policy statement (PPS) stating the kinds of personal data held, the main purposes of using the personal data, and practices related to the personal data, such as the retention period and security measures in place. When preparing a PPS, practitioners may refer to the guidelines in the Leaflet and are advised to seek legal advice, if necessary. The PPS and privacy practices should generally be made available to clients by, for example, displaying them on the company's website. Training should also be provided to staff on the agency's policies and practices on personal data privacy and protection, and updates of requirements and guidelines issued by the relevant authorities.

Handling of Personal Data

10. Practitioners should take all practical steps to ensure that documents containing personal data are kept securely to prevent them from being seen or obtained by unrelated parties. Such steps may include restricting access to these documents on a need-to-know basis and putting in place appropriate information technology security measures to safeguard personal data stored in electronic form to avoid the leakage of data. Practitioners are reminded to observe the guidelines set out in Circular No. 09-10 (CR) issued by the Estate Agents Authority (EAA) regarding information security and privacy protection.
11. The management of estate agency companies should formulate a policy in which it will specify the period of retention of personal data having regard to statutory requirements and applicable practice circulars issued by the EAA: for example, the requirements of DPP2(2) and section 26 of the PDPO and section 8(2) of the Practice Regulation, which requires a licensed estate agent to keep a record of all listings of residential properties

received by the agent and to keep a copy of all estate agency agreements entered into in relation to residential properties for not less than three years after the listings were received or the agreements entered into, as the case may be.

12. When it is necessary to take documents containing personal data such as provisional agreements for sale and purchase or tenancy agreements away from the office, practitioners should take all practicable steps to safeguard the documents from loss or unauthorized access by third parties.
13. Practitioners should ensure that personal data collected should be erased after the fulfilment of the performance of the estate agency work for that data subject. Personal data stored in computers which will not be used anymore should also be thoroughly erased.
14. Practitioners should not dispose of documents containing personal data carelessly, by for example, leaving copies of land search records obtained from the Land Registry in public places. When supplying copies of land searches to the parties concerned, practitioners should remind them to handle the land search copies properly, as they may contain personal data, and to dispose of them properly after use.

Direct Marketing

15. Practitioners using personal data for the purpose of direct marketing must comply with the requirements of the PDPO and, in particular, section 34 of the PDPO.
16. Section 34 of the PDPO requires a data user who uses personal data for direct marketing for the first time to inform the data subject that he may request the data user not to use his personal data. If a data subject makes such a request, the data user should cease to so use the data concerned. Failure to comply with these requirements without reasonable excuse is an offence under the PDPO.

17. Estate agencies should have an adequate policy or practice in force to comply with the requirements of section 34 of the PDPO and maintain an opt-out list of individuals who have chosen not to receive further marketing approaches by the estate agency or any of its staff (opt-out list). The opt-out list should be distributed to all staff who undertake direct marketing activities in the most practical and efficient way, such as by means of a computer network, and the list should be updated as and when an opt-out request is received. If an individual chooses not to receive further marketing approaches, his personal data should (subject to compliance with the Estate Agents Ordinance (Cap 511) and its subsidiary legislation, and EAA's guidelines on the retention of documents with respect to money laundering and other applicable laws and regulations concerning the retention of such data or the document containing such data) also be erased from the database or other records of the agency, so that his personal data will no longer be available for use.
18. If an estate agency has more than one office, each office should maintain its own opt-out list and the head office should prepare a consolidated opt-out list for all offices. Estate agencies should also formulate guidelines on the undertaking of direct marketing activities by their staff and provide training to staff regarding proper marketing approaches and due observance of section 34 of the PDPO in respect of making marketing calls.
19. Practitioners making marketing calls must observe the following:
 - (a) Check the opt-out list to ensure that the telephone number is not on the list before making the call.
 - (b) Inform the data subject of the opt-out choice during the call.
 - (c) Record the opt-out request of the data subject if he or she chooses not to receive further marketing calls and update the opt-out list.

20. Practitioners are reminded to observe the guidelines and implement measures as stated in the guidance note entitled “Guidance on the Collection and Use of Personal Data in Direct Marketing” (Guidance Note) issued by the PCPD or any other guidance notes as may from time to time be issued by it on the subject. The Guidance Note may also be downloaded from the PCPD website.

If a practitioner is found to have breached the PDPO in the collection, use or handling of personal data, he may also have breached the Code of Ethics in failing to refrain from activities which may infringe the law and in failing to protect his client’s interests. In addition, pursuant to Section 15 of the Practice Regulation, the management of an estate agency should establish proper procedures or systems to supervise and manage its estate agency business to ensure that the company and its staff comply with the above guidelines in respect of the collection, use and handling of personal data, and in direct marketing. Practitioners who fail to observe the guidelines set out in this Circular may be subject to disciplinary action by the EAA.

This Circular supersedes Circular No. 99-15 (CR), 02-03 (CR) and 02-08 (CR).

October 2011

Acknowledgement: Some of the guidelines in this Circular are based on the examples used and information provided in the pamphlet on “Proper Handling of Customers’ Personal Data by Estate Agents”, jointly published by the Office of the Privacy Commissioner for Personal Data and the EAA in May 2009.

Holders of Statements of Particulars of Business
 should bring this Circular to the attention of all staff
 engaged in estate agency work.