



## 在《專業天地》內，我們會分享近期常見的投訴個案或違規情況，作為對持牌人的提醒。

In *Horizons*, we will share some recent common complaints or malpractice as a reminder to licensees.

監管局近日接獲投訴，指有持牌人涉嫌違反本局執業通告編號13-05(CR)(下稱「該執業通告」)及《個人資料(私隱)條例》(第486章)(下稱「《私隱條例》」)的規定。有投訴人表示她多年來未有委託某地產代理公司放盤的情況下，卻於近日接獲該公司營業員來電查詢她的放盤意向，懷疑她的個人資料被不當地保留；亦另有投訴人表示，在清晰指示某地產代理公司停止作出放盤查詢後，該公司營業員仍繼續致電，使其備受滋擾，懷疑相關行為違反《私隱條例》中有關直接促銷的規定。

就此，監管局提醒各持牌人，在收集、使用、處理個人資料，以及使用個人資料作直接促銷時，必須遵守《私隱條例》的規定(包括六項保障資料原則)及該執業通告的相關指引。

根據該執業通告，地產代理公司的管理階層應制訂政策，述明個人資料的保留期。有關政策須符合法定要求(包括：《私隱條例》第26條及保障資料第2(2)原則，以及《地產代理常規(一般責任及香港住宅物業)規例》第8(2)條，住宅物業放盤記錄及地產代理協議須備存不少於3年)和監管局發出的指引(例如：根據反洗錢及反恐怖分子資金籌集規定而發出的執業通告編號23-01(CR)，須備存該通告第8.3及8.4段訂明的相關紀錄不少於5年)(下稱「相關政策」)。

持牌人應確保在完成履行地產代理工作後，按相關政策的保留期後，採取所有切實可行的步驟刪除相關資料。若持牌人有意在交易完成後保留客戶的個人資料，以便提供跟進服務或發放物業資訊及宣傳資料，則必須事先通知客戶並取得其同意。

在使用個人資料作直接促銷時，持牌人亦須遵守《私隱條例》第VIA部的條文。持牌人在首次使用資料當事人的個人資料作直接促銷時，必須告知該資料當事人，他有權要求持牌人停止使用其個人資料作直接促銷。如資料當事人要求不再收到促銷接洽，持牌人必須停止使用有關的個人資料，並記錄該要求，讓地產代理公司更新「拒絕服務名單」，並同時根據相關政策的保留期後，從地產代理公司的數據庫或其他記錄中刪除相關個人資料，確保該等資料不會再被使用。

The EAA has recently received complaints alleging that certain licensees may have breached the EAA's practice circular No. 13-05(CR) ("the Practice Circular") and the Personal Data (Privacy) Ordinance (Cap. 486) ("the Privacy Ordinance"). A complainant stated that, despite not having engaged an estate agency company to list her property for many years, she recently received calls from a salesperson of that company inquiring about her listing intention. She suspected that her personal data had been improperly retained. Another complainant stated that, after clearly instructing an estate agency company to stop making listing inquiries, a salesperson of that company continued to call and caused significant nuisance, and the complainant suspected that this behaviour has breached the provision of the Privacy Ordinance relating to direct marketing.

In this regard, the EAA reminds all licensees that when collecting, using, processing personal data and handling personal data for direct marketing, they must strictly comply with the provisions of the Privacy Ordinance (including the six data protection principles ("DPPs")) and the relevant guidelines set out in the Practice Circular.

According to the Practice Circular, 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 (including: the requirements under section 26 of the Privacy Ordinance and DPP2(2), and section 8(2) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation, i.e. to keep a record of all listings of residential properties and all estate agency agreements for not less than three years) and the applicable guidelines issued by the EAA (according to practice circular No. 23-01(CR) on the Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements, licensees must keep the relevant records specified in paragraphs 8.3 and 8.4 of that practice circular for no less than five years) ("Relevant Policy").

Licensees should ensure that after completing the estate agency work, they take all practical steps to erase the personal data collected in accordance with the retention period stipulated in the Relevant Policy. If a licensee intends to retain a client's personal data after the completion of a transaction for the purpose of providing follow-up services or sending property information and promotional materials, prior notification must be given to the client and obtain the client's consent.

When using personal data for the purpose of direct marketing, licensees must also comply with requirements of the provisions in Part VIA of the Privacy Ordinance. When a licensee is using a data subject's personal data in direct marketing for the first time, the licensee must inform the data subject that he has the right to request the data user to cease to use the data for direct marketing purposes. If the data subject requests to stop receiving any marketing approaches, the licensee must cease using the relevant personal data, record the request, have the estate agency company update its "opt-out list". The relevant personal data must also be deleted from the estate agency company's database or other records in accordance with the retention period stipulated in the Relevant Policy, ensuring that such data will not be used again.