



Circular

Circular No. 13- 05 (CR)

Guidelines on the Protection of Personal Data

1. Six Data Protection Principles

- **Comply with the six data protection principles in the collection, use and handling of personal data.**

2. Collection 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.**
- **Provide a Personal Information Collection Statement before collecting personal data.**

3. Use of Personal Data

- **Do not use such personal data for any other purpose without the prescribed consent of that data subject.**
- **Do not sell or transfer personal data to a third party without the data subject's prior written and voluntary consent.**
- **Do not disclose personal data obtained from the estate agency company without the company's consent.**
- **Provide a written Privacy Policy Statement.**

4. Handling of Personal Data

- **Ensure that personal data held is protected against unauthorized or accidental access, processing or erasure.**
- **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.**

5. Direct Marketing

- **Provide prescribed information to a data subject and obtain his consent before using his personal data in direct marketing.**

- **Inform the data subject that he has the right to request the data user to cease to use the data for direct marketing when using a data subject's personal data for the first time.**

Protection of Personal Data

Introduction

1. The Personal Data (Privacy) (Amendment) Ordinance 2012 amended the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") to enhance the protection of privacy rights in relation to personal data and introduced, among other changes, a new regulatory regime on direct marketing. This Circular sets out matters to which licensees 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. This Circular supersedes Circular No. 11-04 (CR).

The Six Data Protection Principles ("DPPs")

2. Licensees are reminded that with regard to the 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 is 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 is accurate. The personal data shall not be kept after fulfilment of the purpose for which the data is 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 it was originally collected or for 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 is 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

3. Licensees 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.
4. On or before collecting personal data, such as for the signing of an estate agency agreement, licensees should provide to the data subject a Personal Information Collection Statement ("PICS") stating clearly the purpose of collecting the data, classes of

persons to whom the data may be transferred, consequences of failing to provide the data and right of access to the data. When preparing a PICS, licensees 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 (www.pcpd.org.hk), and are advised to seek legal advice, if necessary.

5. In the course of carrying out estate agency work, licensees 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”). Licensees 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 licensees 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

6. In general, licensees 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.
7. Licensees 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, licensees should not disclose or transfer the personal data of data subjects to another estate agency company or use such data for their own private purposes.

8. Licensees should not disclose any personal data of a data subject obtained from their estate agency company without the company's consent. Licensees should note that under the PDPO, it is an offence for a person to disclose any personal data of a data subject obtained from a data user without the latter's consent and with an intent to obtain gain or cause loss to the data subject. It is also an offence if the unauthorized disclosure, irrespective of its intent, causes psychological harm to the data subject¹.
9. Licensees should **not** sell or transfer personal data of data subjects to a third party for monetary or in-kind gain or otherwise, unless they have informed the data subjects in writing of the kinds of personal data to be sold or transferred and to whom their personal data will be sold or transferred, obtained their prior written and voluntary consent for such sale or transfer and complied with the relevant requirements in the PDPO.
10. Licensees 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.
11. Licensees 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. Licensees 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. Licensees using the personal data so obtained beyond the specified purpose or against the specific prohibition may breach the PDPO.

¹ As per section 64(3) of the PDPO, the maximum penalty for these two offences is a fine of \$1,000,000 and imprisonment for five years. Licensees may refer to the "*Information Leaflet: Offence for Disclosing Personal Data Obtained without Consent from the Data User*" issued by the PCPD, which may be downloaded from its website, for more information on this offence.

12. Licensees 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, licensees 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 on updates of requirements and guidelines issued by the relevant authorities.

Handling of Personal Data

13. Licensees 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. Licensees 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.
14. 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 guidelines 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.

15. 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, licensees should take all practicable steps to safeguard the documents from loss or unauthorized access by third parties.
16. Licensees should ensure that personal data collected should be erased after the fulfilment of the performance of the estate agency work for that data subject, unless it is necessary for the licensees to retain such data pursuant to statutory requirements or applicable guidelines issued by the EAA. Likewise, personal data stored in computers or other devices (e.g. mobile phones) which will not be used anymore should also be thoroughly erased.
17. Licensees 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, licensees 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

18. Licensees using or transferring personal data for the purpose of direct marketing must comply with the requirements of the PDPO and, in particular, the provisions in Part VIA².
19. A data user who intends to use a data subject's personal data in direct marketing must take specified actions and obtain the necessary consent from the data subject before using the personal

² Under a grandfathering arrangement and subject to fulfilment of certain conditions as mentioned in section 35D of the PDPO, the new requirements do not apply to personal data legitimately collected and used in direct marketing before Part VIA of the PDPO came into operation on 1 April 2013.

data³. As required by section 35C of the PDPO, the data user must provide certain prescribed information and a response channel for the data subject to communicate his consent⁴ or indication of “no objection” to the intended use of his personal data in direct marketing⁵. The prescribed information, which must be presented in a manner that is easily understandable and readable, includes:

- (a) the data user intends to use the personal data of the data subject in direct marketing;
- (b) the data user may not so use the data unless the data user has received the data subject’s consent to the intended use;
- (c) the kinds of personal data to be used;
- (d) the classes of marketing subjects in relation to which the data is to be so used; and
- (e) a response channel through which the data subject may, without charge by the data user, communicate the data subject’s consent to the intended use.

20. A data user must, when using a data subject’s personal data in direct marketing for the first time, inform the data subject that he has the right to request the data user to cease to use the data for direct marketing purposes. Data subjects may also exercise their opt-out right at any time irrespective of any prior consent given. Upon receiving an opt-out request communicated in whatever

³ A data user who fails to undertake the requisite actions or uses personal data in direct marketing without the data subject’s consent commits an offence under the PDPO. The maximum penalty is a fine of \$500,000 and imprisonment for three years.

⁴ For a data user’s use of personal data in direct marketing, consent from the data subject may be obtained either in writing or orally. Where an oral consent is obtained from a data subject, a written confirmation must be sent to the data subject within 14 days after the oral consent is obtained.

⁵ A data user who intends to provide a data subject’s personal data to a third party for use in direct marketing is required to meet additional requirements, as set out in sections 35J and 35K of the PDPO.

manner, including orally or in writing, the data user must, without charge, cease using the data.

21. Estate agency companies engaged in direct marketing activities should have an adequate policy or practice in force to comply with the requirements of Part VIA of the PDPO, and maintain a list of all individuals who have indicated that they do not wish to receive further marketing approaches (“opt-out list”).
22. 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.
23. Subject to compliance with the Estate Agents Ordinance (Cap. 511) and its subsidiary legislation, EAA’s guidelines on the retention of documents with respect to money laundering, or other applicable laws and regulations concerning the retention of personal data or the document containing personal data, the personal data of any individual who chooses not to receive further marketing approaches should be erased from the database or other records of the agency, so that his personal data will no longer be available for use.
24. If an estate agency company conducts its business through branch offices, each branch office should maintain its own opt-out list and the head office should prepare a consolidated opt-out list for all branch offices and inform them of the updated position on a continuous basis. Estate agency companies should also formulate guidelines on the undertaking of direct marketing activities by their staff and provide training to staff regarding accessing and updating of the opt-out list, proper marketing approaches and due observance of the relevant provisions of the PDPO in respect of their direct marketing activities.

25. Without prejudice to the observance of the requirements set out above, licensees using a data subject's personal data in direct marketing (whether by making telephone calls, mail, fax, electronic mail or other means of communication) must observe the following:
- (a) check the opt-out list to ensure that the data subject has not requested for ceasing the use of his relevant personal data for direct marketing purpose every time before approaching the data subject;
 - (b) inform the data subject of his opt-out right when using the data subject's personal data for the first time in direct marketing; and
 - (c) record the opt-out request of the data subject if he requests not to receive further marketing approaches and update the opt-out list.
26. Licensees are reminded to observe the guidelines and implement measures as stated in the guidance note entitled "New Guidance on Direct Marketing" ("Guidance Note") or any other guidance notes as may from time to time be issued by the PCPD on the subject. The Guidance Note may also be downloaded from the PCPD website.

If a licensee 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 issued by the EAA 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 company 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. Licensees who fail to observe the guidelines set out in this Circular may be subject to disciplinary action by the EAA.

July 2013

Attention: Licensees should note that the guidelines contained in this circular only set out certain matters which licensees must pay attention to in their collection, use and handling of personal data, and the use of personal data for direct marketing with regard to the requirements of the PDPO, and they are not meant to be exhaustive. Licensees are advised to read the full text of the PDPO, which is available at www.legislation.gov.hk, for a better understanding of the provisions which may be relevant to and are required to be observed or complied with in their practice.

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